

Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BOMBARDIER INC.,

Plaintiff,

v.

MITSUBISHI AIRCRAFT CORPORATION,
MITSUBISHI AIRCRAFT CORPORATION
AMERICA INC., AEROSPACE TESTING
ENGINEERING & CERTIFICATION INC.,
MICHEL KORWIN-SZYMANOWSKI,
LAURUS BASSON, MARC-ANTOINE
DELARCHE, CINDY DORNÉVAL, KEITH
AYRE, AND JOHN AND/OR JANE DOES 1-
88,

Defendants.

No. 2:18-cv-01543-JLR

BOMBARDIER INC.'S ANSWER
TO MITSUBISHI AIRCRAFT
CORPORATION AMERICA
INC.'S COUNTERCLAIMS

Plaintiff Bombardier Inc. ("Plaintiff" or "Bombardier"), by and through its undersigned counsel, answers the Counterclaims filed on January 28, 2019 (Dkt. # 105) by Mitsubishi Aircraft Corporation America Inc. ("MITAC America" or "Defendant") as follows:

ANSWER TO COUNTERCLAIMS

GENERAL DENIAL

Unless expressly admitted below, Bombardier denies each and every allegation MITAC America has set forth in its Counterclaims, per Fed. R. Civ. P. 8(b)(3).

1 **RESPONSE TO MITAC AMERICA’S SPECIFIC ALLEGATIONS**

2 The numbered paragraphs below correspond to the numbered paragraphs in the
3 Counterclaims.

4 **I. INTRODUCTION¹**

5 1. Since 2015, Bombardier has engaged in a multifaceted scheme to expand its
6 power within the regional jet market by impeding the entrance of a new competing aircraft: the
7 Mitsubishi Regional Jet (“MRJ”). Through a series of interrelated actions directed at MITAC
8 America and other companies and individuals involved in the MRJ’s development and
9 certification, Bombardier has attempted to prevent or delay competition from the MRJ by
10 denying access to a critical development input—the skill and know-how of experienced
11 aerospace professionals—and by tainting the image of the MRJ among purchasers of regional
12 jets. Bombardier’s anticompetitive aims are clear: to increase its market share and revenues by
13 causing prospective MRJ customers to instead purchase Bombardier’s competing Canadair
14 Regional Jets (“CRJs”) or extend the lives of in-service CRJs through the purchase of parts,
15 maintenance, and other aftermarket services from Bombardier.

16 **Response to Paragraph 1:** Bombardier denies all allegations in Paragraph 1.

17 2. Bombardier’s scheme has included a series of actions intended to delay and
18 disrupt the development, certification, and sale of the MRJ. Over the course of the past three
19 years, Bombardier has: (1) levied baseless threats and accusations against MITAC America and
20 others involved in developing the MRJ—including Mitsubishi Aircraft Corporation (“MITAC”),
21 Mitsubishi Heavy Industries, Ltd. (“MHI”), Aerospace Testing Engineering & Certification, Inc.
22 (“AeroTEC”), and those companies’ current and prospective employees—in order to restrict the
23 free flow of skilled labor; (2) made threats against its own employees to deter them from
24 accepting employment on the MRJ program; (3) attempted to coerce MITAC America, MITAC,

25
26 ¹ For ease of reference, Bombardier has reproduced the headings MITAC America used in its
27 Counterclaims. To the extent these headings contain any allegations or characterizations, Bombardier denies the
truth, if any, of those allegations or characterizations.

1 and AeroTEC to enter into per se unlawful no-poaching agreements in order to undermine
 2 recruitment and hiring activities in support of the MRJ program; (4) threatened the long-standing
 3 supply relationship between MHI and Bombardier in an attempt to achieve its illicit ends; and (5)
 4 initiated this litigation in a further effort to delay the MRJ program, undermine prospective
 5 customers' and suppliers' confidence in the MRJ, and impair the efforts of MITAC America and
 6 MITAC to sell the MRJ during a critical period for regional jet services.

7 **Response to Paragraph 2:** Bombardier denies all allegations in Paragraph 2.

8 3. The purported justifications for Bombardier's demands have changed over time,
 9 but the purpose and intended effect of its conduct have been consistent, as demonstrated by
 10 Bombardier's own statements confirming its intent to block competition from the MRJ. This
 11 litigation is the latest in a series of efforts taken by Bombardier to blunt an emerging competitive
 12 threat in an attempt to monopolize the regional jet market. Bombardier's anticompetitive conduct
 13 violates the Sherman Act and the Washington Consumer Protection Act.

14 **Response to Paragraph 3:** Bombardier denies all allegations in Paragraph 3.

15 II. THE PARTIES

16 4. Counterclaim Plaintiff MITAC America is a Delaware corporation with its
 17 principal place of business in Seattle, Washington. MITAC America is a wholly-owned
 18 subsidiary of MITAC, a Japanese corporation. MITAC is a subsidiary of MHI, also a Japanese
 19 corporation. Together, these companies are referred to herein as "Mitsubishi."

20 **Response to Paragraph 4:** Admitted to the extent that MITAC America is a Delaware
 21 corporation. Bombardier lacks knowledge or information sufficient to form a belief about the
 22 truth of the remaining allegations in Paragraph 4 and therefore denies them.

23 5. Counterclaim Defendant Bombardier, on information and belief, is a corporation
 24 organized and existing under the laws of the province of Quebec, Canada, with its principal place
 25 of business in Montreal, Quebec, Canada.

26 **Response to Paragraph 5:** Admitted.

III. JURISDICTION AND VENUE

6. MITAC America brings its claims against Bombardier under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, and the Washington Consumer Protection Act, RCW ch. 19.86.

Response to Paragraph 6: Bombardier admits that MITAC America purports to bring an action under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, and the Washington Consumer Protection Act, RCW ch. 19.86, but denies it has violated either the Sherman Act or the Washington Consumer Protection Act.

7. The Court has subject-matter jurisdiction over MITAC America's counterclaims under 15 U.S.C. § 2 pursuant to 28 U.S.C. §§ 1331 and 1337. The Court has subject-matter jurisdiction over MITAC America's counterclaims under Washington state law pursuant to 28 U.S.C. § 1367 because the state-law claims arise out of the same case or controversy as gives rise to MITAC America's counterclaims under the Sherman Act.

Response to Paragraph 7: Paragraph 7 asserts legal conclusions to which no responses are required. To the extent responses are required, Bombardier denies all allegations in Paragraph 7.

8. The Court has personal jurisdiction over Bombardier because Bombardier consented to the Court's jurisdiction over it by filing this action in this Court and because Bombardier has committed unlawful acts within Washington that give rise to the causes of action alleged herein.

Response to Paragraph 8: Paragraph 8 asserts legal conclusions to which no responses are required. To the extent any response is required, Bombardier consents to the personal jurisdiction of this Court for the limited purposes of contesting MITAC America's Counterclaims. Bombardier denies the remaining allegations in Paragraph 8.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this judicial district and pursuant to 28 U.S.C. § 1391(c) because Bombardier is not a

1 resident of any judicial district and Bombardier is subject to the court's personal jurisdiction,
2 including by virtue of Bombardier's filing of this action in this Court.

3 **Response to Paragraph 9:** Paragraph 9 asserts legal conclusions to which no responses
4 are required. To the extent any response is required, Bombardier admits that it brought suit
5 against Defendants in this action. Bombardier denies the remaining allegations in Paragraph 9.

6 **IV. FACTUAL BACKGROUND**

7 **A. Mitsubishi's Efforts to Enter the Regional Jet Market**

8 10. Regional jets are single-aisle, turbofan-powered commercial aircraft with seating
9 capacity for 50 to 100 passengers and flight ranges up to approximately 2,500 nautical miles.

10 **Response to Paragraph 10:** Bombardier admits that regional jets may have a single
11 aisle, may be turbofan-powered, may have seating capacity for 50 to 100 passengers, and/or may
12 have flight ranges of up to approximately 2,500 nautical miles. The allegations of Paragraph 10
13 purport to be MITAC America's definition of "regional jets." Bombardier denies that such
14 definition is the only manner in which to define regional jets and further denies that it is the
15 proper definition for purposes of identifying any particular market for MITAC America's
16 counterclaims. To the extent there are remaining allegations in Paragraph 10, Bombardier denies
17 them.

18 11. The first regional jets entered service in 1992 when Bombardier began delivery of
19 its Canadair Regional Jet ("CRJ"). Prior to introduction of the CRJ100, demand for short to
20 medium-range aircraft had increased due in part to U.S. airlines' increasing use of a hub-and
21 spoke system (which increased the number of flights between larger "hub" airports and smaller
22 "spoke" airports) after passage of the 1978 Airline Deregulation Act. Neither turboprop airplanes
23 nor existing jets were capable of meeting the market demand for fast, efficient, quiet, and smooth
24 midsize aircraft needed to service an increasing number of routes worldwide. As the first jet
25 capable of filling the gap between the operating capabilities of short-haul turboprop airplanes
26 and larger capacity, longer range jets, the CRJ100 quickly surpassed analysts' sales expectations
27 and established Bombardier's position as the leader in the regional jet market.

1 **Response to Paragraph 11:** Admitted only that the CRJ100 entered service in 1992.
 2 The remaining allegations of Paragraph 11 constitute opinion to which no response is required.
 3 To the extent any response is required; Bombardier lacks knowledge or information sufficient to
 4 form a belief as to the truth, if any, of the allegations and therefore denies them.

5 12. Bombardier was the sole manufacturer of regional jets until late 1996, when
 6 Brazilian jet maker Embraer SA (“Embraer”) delivered its first Embraer Regional Jet (“ERJ”).
 7 Since then, Bombardier and Embraer have dominated the market for regional jets, accounting for
 8 89% of in-service regional jets worldwide over the past decade, and as of 2018. British
 9 Aerospace and Fokker briefly attempted to compete with Bombardier and Embraer in the
 10 regional jet market, but neither succeeded in gaining a foothold and both ultimately ceased
 11 manufacturing regional jets. Russian-based United Aircraft Corporation and Chinese state-owned
 12 Commercial Aircraft Corporation of China have made some inroads in their home markets but
 13 together only account for approximately 4% of in-service regional jets as of 2018.

14 **Response to Paragraph 12:** Bombardier lacks knowledge or information sufficient to
 15 form a belief as to the truth, if any, of the allegations in Paragraph 12 and therefore denies them.

16 13. The barriers faced by new entrants into the regional jet market are significant. As
 17 explained further below, these barriers include the cost of developing a regional jet, the
 18 complexity of the development and certification process, manufacturing requirements and costs,
 19 the challenges of earning customer trust for a new aircraft, and the costs associated with an
 20 airline’s decision to switch to a new manufacturer’s aircraft. Among the many barriers to entry is
 21 the finite supply of engineers with the skills and know-how necessary to the development and
 22 certification of commercial jets. Restrictions on the mobility of employees with these specialized
 23 skills and know-how can serve as an additional barrier to entry.

24 **Response to Paragraph 13:** The allegations of Paragraph 13 constitute opinion to which
 25 no response is required; to the extent any response is required, Bombardier lacks knowledge or
 26 information sufficient to form a belief as to the truth, if any, of the allegations and therefore
 27 denies them.

14. Due to the limited supply and vital importance of engineers with specialized skills and know-how, aircraft manufacturers (including companies seeking to enter the market) frequently seek to recruit and hire such employees from other aerospace companies. For example, when Bombardier was developing its own expertise in support of certification of the CRJ100, it recruited heavily from British Aerospace, which at the time was a leading jet manufacturer. Similarly, in 1997—the year after Embraer began competing against Bombardier in the regional jet market—Bombardier recruited and hired at least a dozen engineers from Embraer. More recently, Bombardier hired at least 50 experienced aeronautical engineers from Embraer to work on the development of its CSeries family of narrowbody jets. On information and belief, Bombardier recruited and hired these Embraer employees so that Bombardier could benefit from the specialized skills and know-how that the employees had developed through their work on Embraer jets. On information and belief, Embraer likewise has hired skilled employees from Bombardier.

Response to Paragraph 14: Bombardier admits that aircraft manufacturers recruit and hire employees from other aerospace companies. Bombardier further admits that it and other aerospace companies have properly sought to recruit engineers with specialized skills and know-how in various aspects of aircraft development and design. Bombardier denies the allegation of Paragraph 14 to the extent they imply that Bombardier has engaged in recruiting and hiring practices that are improper or that have harmed a competitor. In addition, Bombardier denies the remaining allegations in Paragraph 14 because it lacks knowledge or information sufficient to form a belief as to the truth of those allegations, if any.

15. In March 2008, MHI announced the launch of a program to develop the MRJ, a next-generation regional jet that seeks to be the most efficient, comfortable, and reliable commercial aircraft of its type to ever take flight. MITAC and MITAC America were formed in 2008 to lead the MRJ program, including the development, marketing, and sale of the MRJ. The MRJ is being designed to burn 20% less fuel and make 40% less noise compared to existing

1 regional jets. As such, the MRJ is expected to pose formidable competition to Bombardier in the
2 regional jet market.

3 **Response to Paragraph 15:** Bombardier admits only that a program to develop the MRJ
4 was announced in or about 2008. Bombardier lacks knowledge or information sufficient to form
5 a belief as to the truth, if any, of the remaining allegations of Paragraph 15 and therefore denies
6 them.

7 16. The MRJ is a “clean sheet” aircraft, which means the design is new, not based on
8 a prior previously certified plane. Development and certification of a clean sheet aircraft is a
9 complex, costly, and lengthy process. As Bombardier acknowledges in its complaint, even
10 experienced manufacturers typically spend several billion dollars and upwards of ten years
11 bringing a clean sheet aircraft from concept and design to commercialization and flight. (*See*
12 Dkt. 1 at ¶¶ 24-27.) Unexpected setbacks and delays during the development process are also not
13 atypical. Certification flight testing of the MRJ is currently expected to begin in early 2019 with
14 the MRJ entering into service in 2020.

15 **Response to Paragraph 16:** Bombardier admits that the MRJ is a clean sheet aircraft
16 and that bringing a clean sheet aircraft from concept and design to commercialization and flight
17 can be a complex and costly process. Paragraph 16 also contains characterizations of a document
18 that speaks for itself. Bombardier lacks sufficient information to form a belief as to the truth, if
19 any, of all other allegations of Paragraph 16 and therefore denies them.

20 17. The MRJ will be the first all-new commercial jet developed in large part by a
21 Japanese company since the 1960s. Consequently, at the time the MRJ program was launched,
22 few individuals in Japan possessed expertise related to the development and certification of
23 aircraft.

24 **Response to Paragraph 17:** Paragraph 17 contains allegations that assume facts and
25 future events, and on at least that basis, Bombardier denies the allegations in the first sentence of
26 Paragraph 17. Bombardier lacks sufficient information as to the truth of the second sentence in
27 Paragraph 17 and therefore denies it.

1 18. To support their efforts to bring the MRJ to market, including by obtaining
2 required certification from regulatory authorities in the United States, Japan, Canada, and
3 Europe, MITAC and MITAC America have sought to obtain expert assistance from outside
4 Japan. Since mid-2014, MITAC has partnered with AeroTEC, a company based in Seattle,
5 Washington that specializes in the testing, engineering, and certification of aircraft for its clients.
6 In July 2015, MITAC America opened its Seattle Engineering Center to assist in testing and
7 certification efforts for the MRJ. The following summer, in August 2016, MITAC America
8 opened a Flight Test Center in Moses Lake, Washington.

9 **Response to Paragraph 18:** Bombardier admits the allegations in Paragraph 18 to the
10 extent that Bombardier is aware that MITAC and MITAC America have sought and obtained
11 expert assistance from outside Japan to support their efforts to bring the MRJ to market.
12 Bombardier further admits that MITAC purports to have partnered with AeroTEC. Bombardier
13 lacks knowledge or information sufficient to form a belief as to the truth, if any, of all other
14 allegations of Paragraph 18 and therefore denies them.

15 19. In order to meet their human resources needs, MITAC, MITAC America, and
16 AeroTEC have undertaken efforts to recruit and hire individuals with specialized skill and know-
17 how related to the development and certification of regional jets.

18 **Response to Paragraph 19:** Bombardier admits that the named entities have undertaken
19 efforts to recruit and hire individuals with specialized skill and know-how related to the
20 development and certification of regional jets. Bombardier lacks knowledge or information
21 sufficient to form a belief as to the truth, if any, of the remaining allegations of Paragraph 19 and
22 therefore denies it.

23 20. As detailed further below, beginning in 2015, AeroTEC advertised that it was
24 hiring for positions related to flight testing of the MRJ, held job fairs to identify potential
25 candidates, and engaged in other recruitment activities both through recruiters and via direct
26 communications with potential hires.

1 **Response to Paragraph 20:** Admitted that AeroTEC has engaged in substantial
 2 recruiting activity related to the MRJ. Bombardier lacks sufficient information to form a belief
 3 regarding any further allegations in this paragraph, such as when recruiting activities began.

4 21. In 2016, MITAC and MITAC America sought to recruit and hire over 200 aircraft
 5 system engineers to work on certification activities of the MRJ aircraft. As part of their efforts,
 6 the companies held eight job fairs in cities throughout North America in 2016: Wichita, Kansas
 7 (May 6-7), Anaheim, California (June 18-19), Dallas, Texas (June 24-25), Montreal, Quebec
 8 (July 15-16), and Seattle, Washington (July 30-31, August 19-20, October 28, and December 3).
 9 Those cities were chosen because each was well-known to be the home of sizeable aerospace
 10 companies and thus job fairs in those cities were expected to result in sizeable pools of qualified
 11 job applicants. Through the eight job fairs held in 2016, MITAC hired a total of 28 employees, 9
 12 of whom had previously been employed by Bombardier.

13 **Response to Paragraph 21:** Admitted to the extent a) that in 2016 MITAC and MITAC
 14 America sought to recruit and hire engineers to work on certification activities of the MRJ
 15 aircraft, b) that MITAC and MITAC America organized a “job fair” in Montreal, Quebec for
 16 July 15-16, 2016, c) that the North American cities listed have aerospace companies, and d) that
 17 MITAC has hired individuals who worked at Bombardier. Bombardier lacks knowledge or
 18 information sufficient to form a belief as to the truth, if any, of all other allegations in Paragraph
 19 21 and therefore denies them.

20 22. In addition to holding job fairs, MITAC and MITAC America have publicized job
 21 openings via the website LinkedIn.com and have engaged recruiting firms to identify job
 22 candidates. All told, MITAC and MITAC America have together recruited and hired candidates
 23 from the leading jet manufacturers (including Boeing, Airbus, and Embraer) as well as systems
 24 suppliers and government agencies.

25 **Response to Paragraph 22:** Admitted to the extent MITAC and MITAC America have
 26 engaged professional recruiting services to support their efforts to hire Bombardier employees
 27 and to the extent that ex-Boeing personnel were known to be in the employ of MITAC.

1 Bombardier lacks knowledge or information sufficient to form a belief as to the truth, if any, of
 2 all other allegations in Paragraph 22 and therefore denies them.

3 23. The singular purpose of MITAC and MITAC America's recruiting efforts was to
 4 meet the human resources needs of the MRJ program. Neither MITAC nor MITAC America
 5 sought to disrupt or interfere with the business operations of Bombardier or any other company
 6 nor to acquire any company's proprietary intellectual property. Nor did MITAC or MITAC
 7 America believe that any such disruption or interference with Bombardier's operations was
 8 possible given Bombardier's immense size and its long history of experience with jet
 9 development and certification. On information and belief, AeroTEC's own recruiting efforts
 10 were similarly motivated only by its desire to meet its own human resources needs, not to disrupt
 11 the operations of Bombardier or any other company or to acquire any company's proprietary
 12 intellectual property.

13 **Response to Paragraph 23:** Bombardier denies all allegations contained in
 14 Paragraph 23.

15 **B. Bombardier's Predatory Scheme to Thwart Competition in the Regional Jet Market**

16 24. Since late 2015, Bombardier has engaged in a multifaceted scheme to restrain
 17 competition in the regional jet market by impeding and delaying the development, certification,
 18 and sale of the MRJ. Bombardier's anticompetitive conduct has included a series of spurious and
 19 improper threats and allegations against Mitsubishi, AeroTEC, and former and current
 20 Bombardier employees that were intended to prevent and impede competition from the MRJ.
 21 Bombardier's attempts to prevent Mitsubishi and AeroTEC from hiring, retaining, and utilizing
 22 highly-skilled individuals critical to the development and certification of the MRJ have included
 23 its efforts to: coerce Mitsubishi and AeroTEC to enter per se illegal no-poach agreements or
 24 otherwise refrain from the legitimate recruitment and hiring of Bombardier employees (including
 25 via threats that the Bombardier-MHI supply relationship would be threatened if Bombardier's
 26 illegal demands were not heeded); deter potential job candidates from applying for or accepting
 27 employment related to the MRJ program; and limit the ability of former Bombardier employees

1 to perform legitimate job functions in support of the MRJ effort. At the same time, Bombardier
2 has attempted to impair Mitsubishi's reputation and goodwill, including among current and
3 potential MRJ customers and suppliers, by falsely insinuating that the success of the MRJ
4 program is dependent on misappropriated trade secrets, thus sullyng the image of the MRJ and
5 creating doubt and uncertainty about whether the MRJ will be able to meet development and
6 production deadlines and enter the market notwithstanding Bombardier's lawsuit. All of these
7 actions were taken as part of an overarching plot to monopolize and reduce competition in the
8 regional jet market.

9 **Response to Paragraph 24:** Bombardier denies all allegations in Paragraph 24.

10 25. Bombardier's efforts to undermine the development of the MRJ began no later
11 than October 22, 2015 when Bombardier's Director of Legal Services wrote to AeroTEC and its
12 Head of MRJ Flight Testing, Michel Korwin-Szymanowski, threatening to "institute legal
13 proceedings" unless AeroTEC and Mr. Korwin-Szymanowski ceased efforts to recruit
14 Bombardier and Learjet employees. (*See* Ex. A (October 22, 2015 correspondence between
15 Bombardier and AeroTEC); Dkt. 1-11 (October 22, 2015 letter from Bombardier to Korwin-
16 Szymanowski).)

17 **Response to Paragraph 25:** Bombardier admits that on October 22, 2015, Bombardier's
18 Director of Legal Services wrote to AeroTEC's Head of MRJ Flight Testing, Michel Korwin-
19 Szymanowski. Paragraph 25 contains characterizations of documents and written correspondence
20 that speak for themselves. Bombardier denies any and all remaining allegations in Paragraph 25.

21 26. Two days prior, on October 20, 2015, Mr. Korwin-Szymanowski had emailed a
22 "form letter" to hundreds of individuals with flight test experience, including but not limited to
23 former colleagues at Bombardier, regarding employment opportunities at AeroTEC and
24 referencing recruiting and non-recruiting social events being held the following week in Wichita,
25 Kansas and Montreal, Canada. (*See* Dkt. 1-12 at 33-35.) These recruiting activities were aimed at
26 hiring qualified personnel to work on the MRJ program.

Response to Paragraph 26: Admitted that Bombardier filed as Dkt. # 1-12 a copy of an email that Defendant Korwin-Szymanowski purportedly sent to 247 Bombardier employees. Bombardier refers MITAC America to Dkt. # 1-12 for the content contained therein. Bombardier is without sufficient knowledge or information to form a belief as to the truth, if any, of the other allegations in Paragraph 26 and therefore denies them.

27. Referencing Mr. Korwin-Szymanowski's October 20, 2015 email, Bombardier demanded that Mr. Korwin-Szymanowski and AeroTEC cancel events planned for October 22, 2015 and October 28, 2018 in Wichita and Montreal, respectively, and end the use of "mobile truck signage with the mention 'Now hiring in Seattle' with interview dates and times" in any area "around Bombardier and Learjet facilities." Notwithstanding that Mr. Korwin-Szymanowski was no longer employed by Bombardier and had never entered a post-employment non-compete agreement, Bombardier asserted that Mr. Korwin-Szymanowski's recruitment activities "unquestionably constitute[] a breach of [his] confidentiality duty and also a breach of contract." Citing no authority, Bombardier asserted that "[c]ourts have routinely reached the conclusion that former employees are not allowed to facilitate the piracy of employees from their former employer" and that "[i]n these situations, employees and their new employer are liable for the conspiracy to achieve such piracy." (Dkt. 1-11.)

Response to Paragraph 27: Paragraph 27 contains characterizations of a document and written correspondence that speak for themselves. Bombardier admits that as of the time of the written correspondence, Bombardier did not employ Defendant Korwin-Szymanowski. Bombardier lacks knowledge sufficient to admit or deny the remaining allegations in Paragraph 27 and on that basis denies those allegations.

28. Although neither AeroTEC nor Mr. Korwin-Szymanowski had done anything improper, AeroTEC reluctantly conformed to Bombardier's demands, with AeroTEC's President Lee Human advising in an October 22, 2015 email that "1) Mr. Korwin-Szymanowski has been removed from this recruiting activity either directly or indirectly; 2) We have cancelled the social hour scheduled for tonight at Hangar 1; 3) We have moved recruitment trucks away from your

facilities.” (*See* Ex. A.) As Mr. Human later explained, AeroTEC “did not agree with Bombardier’s claims of impropriety,” but AeroTEC nevertheless “decided to cancel the impending social events and job fairs in Wichita and Montreal, and agreed Michel [Korwin-Szymanowski] would not contact any Bombardier employees going forward,” in part because AeroTEC “had recently been invited by Bombardier to bid on a project . . . and we wanted to stay in their good graces.” (Dkt. 66 at ¶ 5; *see also* Dkt. 60 at 3 (“AeroTEC did not, and does not, agree that Korwin-Szymanowski used or possessed any such confidential information, but in an attempt to work with Bombardier, AeroTEC agreed that he would no longer be involved with the recruiting activity.”).)

Response to Paragraph 28: Denied that neither “AeroTEC nor Mr. Korwin-Szymanowski had done anything improper.” Admitted that MITAC America attached as Exhibit A to its Counterclaims a purported copy of correspondence that Mr. Human sent to Bombardier. Admitted that paragraph 28 appears to include quotations from a declaration purportedly by Mr. Human filed at Dkt. # 66 and from AeroTEC’s Redacted Opposition to Bombardier’s Motion for a Preliminary Injunction filed at Dkt. #60. To the extent that Paragraph 28 contains characterizations of documents, those documents speak for themselves. Bombardier lacks knowledge sufficient to admit or deny the remaining allegations in Paragraph 28 and on that basis denies such allegations.

29. On or about February 12, 2016, AeroTEC informed Bombardier that it intended to restart its recruiting activities in the Montreal and Wichita areas. In response, Bombardier’s Senior Director of Human Resources, Product Development Engineering stated that Bombardier was adamantly opposed to any such recruitment activities by AeroTEC. (*See* Dkt. 1-12 at 7.)

Response to Paragraph 29: The allegations in Paragraph 29 contain characterizations of a document that speaks for itself. Bombardier admits only that the referenced docket item purports to refer to an alleged communication from AeroTEC to Bombardier. Bombardier denies any remaining allegations in Paragraph 29 because it lacks knowledge or information sufficient to form a belief about the truth, if any, of the allegations.

30. On April 26, 2016, Bombardier escalated its threats towards AeroTEC and its employees when Bombardier's outside counsel, Peter Nohle of Jackson Lewis, sent a letter to AeroTEC's president threatening litigation against AeroTEC and the former Bombardier employees hired by AeroTEC unless, among other things, AeroTEC and the former Bombardier employees entered into no-poaching agreements pursuant to which they would not directly or indirectly communicate with or otherwise solicit "any current or recently departed employee of Bombardier regarding any employment or similar opportunities for work outside of Bombardier for a period of one year from the date of this Agreement." (*See* Dkt. 1-12.) The threats issued by Bombardier's outside counsel purported to be based on legal obligations and/or restrictions that Bombardier inaccurately claimed were applicable to its current and former employees Bombardier's Code of Ethics and Business Conduct, and on Bombardier's claim that the recruitment-related activities of two former Bombardier employees, Mr. Korwin-Szymanowski and Dale Goulding, created the risk of "substantial liability" for AeroTEC. Even if those propositions were correct (and they are not), they would provide no lawful basis for the wide-ranging and anticompetitive no-poaching agreement Bombardier demanded.

Response to Paragraph 30: The allegations in Paragraph 30 contain characterizations of a document that speaks for itself. Bombardier admits Paragraph 30 only to the extent that legal counsel acting on behalf of Bombardier wrote AeroTEC's president on April 26, 2016, to discuss Bombardier's Code of Ethics and Business Conduct and related obligations of former Bombardier employees hired by AeroTEC such as Mr. Korwin-Szymanowski and Mr. Goulding. Bombardier specifically denies the allegations of Paragraph 30 that state or imply that the letter constituted "threats" against AeroTEC or its employees; that Bombardier was demanding that AeroTEC enter into an anticompetitive no-poaching agreement; or that Bombardier engaged in any wrongdoing. To the extent there are any additional factual allegations in this paragraph, Bombardier denies any such allegations.

31. In early May 2016, outside counsel for AeroTEC responded to Bombardier's April 26 demand letter, and over the following months counsel for the companies discussed the

1 terms of the additional no-poach agreement Bombardier requested. Ultimately, the companies
2 did not execute any agreement.

3 **Response to Paragraph 31:** Admitted to the extent Bombardier and its counsel
4 communicated with counsel for AeroTEC and that no agreement was reached. Bombardier
5 denies any remaining allegations in Paragraph 31.

6 32. However, Bombardier's threats towards AeroTEC succeeded in their objective of
7 continuing to deter AeroTEC's hiring of employees in support of the MRJ project. As stated in a
8 June 3, 2016 letter from AeroTEC's president to Bombardier test pilot Ed Grabman, "AeroTEC
9 does not agree with Bombardier's assertion that we cannot freely recruit employees of any
10 background and the two companies are in the process of trying to work out their differences.
11 Until this is accomplished, however, we are refraining from offering positions to any current
12 employees of Bombardier." (Ex. B.) Thus, AeroTEC's ability to hire skilled labor for the MRJ
13 program was impaired not only by the concessions Bombardier had coerced AeroTEC to make,
14 but also by Bombardier's subsequent threats of legal action against AeroTEC.

15 **Response to Paragraph 32:** The allegations in Paragraph 32 contain characterizations
16 of a document that speaks for itself. Bombardier denies that the referenced letter or its content
17 was the result of improper threats or any improper action asserted against AeroTEC, or that any
18 such improper action occurred. Bombardier denies any other allegations in Paragraph 32.

19 33. Around this time, Bombardier began issuing similar threats to Mitsubishi. On
20 June 3, 2016, Bombardier's Vice President of Contracts and Legal Services, Christian Poupart,
21 sent an email to the Managing Counsel of MHI, Luke Walker, regarding Bombardier's
22 "concern[]" that "AeroTEC . . . has recently been soliciting and recruiting a number of key
23 employees from our Flight [T]est Center, despite being asked by us on numerous occasions to
24 cease and desist from that practice" and that "some of these former Bombardier employees have
25 been transferred to MHI or are working on the MRJ flight test program." (Dkt. 1-14.) Alluding
26 vaguely to the "concern[]" that undefined "Bombardier proprietary methods and know-how"
27 would "inevitably be transferred and used by AeroTEC or MHI for the purpose of their flight

1 testing activities,” Mr. Poupart requested Mr. Walker’s “assistance in ensuring that this practice
 2 of soliciting and hiring Bombardier key flight testing employees ceases immediately” In
 3 response, Mr. Walker requested that Mr. Poupart provide “the non-solicitation agreement that
 4 Bombardier believes prohibits AeroTEC from recruiting Bombardier employees” in addition to
 5 “any of the correspondence that you have had with AeroTEC.” Mr. Poupart did not respond to
 6 Mr. Walker’s request.

7 **Response to Paragraph 33:** The allegations in Paragraph 33 contain characterizations
 8 of documents which speak for themselves. Bombardier admits Paragraph 33 to the extent that
 9 Mr. Poupart emailed Mr. Walker of MHI on June 3, 2016, relative to concerns involving the
 10 recruiting activities of AeroTEC and that Mr. Walker replied two days later. *See* Dkt. # 1-14 at 2.
 11 Bombardier denies that Mr. Poupart’s email constituted “threats” to Mitsubishi or that the email
 12 did not clearly express concerns relating to “Bombardier proprietary methods and know-how.”
 13 Bombardier denies any remaining allegations in Paragraph 33.

14 34. On July 14, 2016, Mr. Poupart sent a letter to Mr. Walker expressing objections to
 15 a job fair scheduled to take place over the following two days in Montreal. (Dkt. 1-15.) As
 16 indicated in the newspaper advertisement for the job fair referenced in Mr. Poupart’s letter,
 17 MITAC was at that point “looking to hire over 200 Aircraft Systems Engineers who can work on
 18 Certification activities for MRJ aircraft in Japan.” (Dkt. 1-10 at 134-35.) After acknowledging
 19 the lawful intent of the job fair and that the promotional materials were not “directly aimed at
 20 Bombardier employees,” Mr. Poupart nevertheless insinuated that Mitsubishi’s holding of the
 21 job fair was illegal. Without citation to authority or explanation of how Mitsubishi’s conduct was
 22 wrongful, Mr. Poupart claimed that “[c]ourts have routinely reached the conclusion that massive
 23 solicitation that cause (sic) irreversible damages to a business is prohibited. In these situations,
 24 employees and their new employer can be held jointly liable for the prejudice caused by such
 25 practice.” Then, without contending or suggesting that any previously-departed Bombardier
 26 employee had in fact misappropriated any Bombardier intellectual property, Mr. Poupart
 27 “remind[ed]” Mr. Walker that any such hypothetical misappropriation would be wrongful. Mr.

Poupart concluded by stating that “[w]e trust you understand the seriousness of the situation and ask that MHI refrains from engaging in any illegal activity that could cause Bombardier to suffer damages, failing which we reserve all of our rights against MHI, including our right to institute legal proceeding (sic) against MHI without any further notice.”

Response to Paragraph 34: The allegations in Paragraph 34 contain characterizations of a document that speaks for itself. Admitted to the extent that on July 14, 2016, Mr. Poupart sent a letter to Mr. Walker discussing a job fair scheduled to take place over the following two days in Montreal. *See* Dkt. # 1-15 at 2. Bombardier denies that Mr. Poupart expressed objections to the holding of the job fair or that he “insinuated that Mitsubishi’s holding of the job fair was illegal.” Bombardier denies any remaining allegations of Paragraph 34.

35. Three weeks later, Bombardier escalated its threats against MHI. On August 5, 2016, Alain Bellemare, the President and Chief Executive Officer of Bombardier, sent a letter to Hideaki Omiya, the Chairman of the Board of MHI, in which he described the two companies’ partnership “on various aircraft programs for several decades” and how they have “had to face and resolve several issues in order to continue enjoying a mutually beneficial relationship.” (Dkt. 1-16.) After making a request for MHI’s cooperation on certain payment terms related to the companies’ supply contract, Mr. Bellemare referred Mr. Omiya to an attached letter— Mr. Poupart’s July 14, 2016, letter to Mr. Walker—and implicitly threatened the continuation of the supply relationship between Bombardier and MHI unless MHI ceased the solicitation of Bombardier employees. Mr. Bellemare wrote: “You will appreciate the fact that the relationship between our two companies must be based on trust. As key suppliers, we expect Mitsubishi not to cause harm to Bombardier by engaging in massive solicitation of our engineers.” The letter concluded with the not-so-subtle threat that “[t]he long standing partnership between Bombardier and MHI has been a successful one and I trust that MHI will continue to be [a] key supplier and will support Bombardier in light of the current market conditions.”

Response to Paragraph 35: The allegations in Paragraph 35 contain characterizations of a document that speaks for itself. Bombardier admits that on August 5, 2016, Mr. Bellemare

1 sent a letter to Mr. Omiya. Bombardier specifically denies that the letter constituted a “threat” to
2 MHI or that Bombardier otherwise engaged in improper conduct. Bombardier further denies any
3 remaining allegations in this paragraph.

4 36. In response to Mr. Bellemare’s letter, on August 22, 2016, Hiromichi Morimoto,
5 the President of MITAC, wrote to Mr. Bellemare to acknowledge that MITAC was “currently
6 engaged in an aircraft development program in Japan and North America and due to our need for
7 qualified engineers, we have recently carried out various recruiting activities, including job fairs,
8 in several North American cities with an aviation industry presence.” (Ex. C.) He went on to
9 assure Mr. Bellemare that MITAC was acting within the law and not attempting to harm
10 Bombardier’s business:

11 We are confident that all our recruiting activities held, or to be
12 held, fully comply with all applicable laws and regulations, and
13 moreover, should be considered routine and customary for any
14 company in our industry seeking qualified employees. With
15 respect to your concerns, please be assured that these recruiting
16 activities were not and are not intended to harm or target
17 Bombardier’s business. Further, Mitsubishi Aircraft Corporation,
like MHI and all other MHI group companies, has a strong
commitment to respect the intellectual property rights of all third
parties, and we take appropriate measures in this respect with all
new employees.

18 **Response to Paragraph 36:** The allegations in Paragraph 36 contain characterizations
19 of a document that speaks for itself. Bombardier admits receipt of the letter referenced in
20 Paragraph 36. Bombardier denies any remaining allegations in this paragraph.

21 37. Mr. Bellemare did not reply to Mr. Morimoto’s letter or otherwise respond to
22 MITAC. Instead, Mr. Bellemare opted to send a second letter to the Chairman of the Board of
23 MHI, again implicitly threatening the MHI-Bombardier supply relationship on the basis of
24 MITAC’s lawful efforts to compete with Bombardier. (Dkt. 1-17.) In a January 27, 2017 letter to
25 Mr. Omiya, Mr. Bellemare complained that “despite my [August 5, 2016] letter . . . MHI
26 continues to actively solicit and hire key employees of Bombardier.” Without evidence or
27 explanation—but with an acknowledgement that Bombardier’s fear of competition in the

1 regional jet market underpinned its threats—Mr. Bellemare asserted that “we have reasons to
 2 believe that the employees recruited by MHI will use the intellectual property owned by
 3 Bombardier to assist MHI in developing the MRJ aircraft which will compete against
 4 Bombardier aircraft” and requested that Mr. Omiya “[t]ake note that my team is instructed to
 5 take all necessary actions to ensure the protection of the intellectual property of Bombardier and
 6 its know-how.” Mr. Bellemare concluded by again implicitly threatening the MHI-Bombardier
 7 supply relationship should MITAC’s lawful hiring activities continue, stating that “[i]n light of
 8 the long standing partnership between our corporations, I trust that I can count on your
 9 cooperation in putting an end to the solicitation of our employees by MHI.”

10 **Response to Paragraph 37:** The allegations in Paragraph 37 contain characterizations
 11 of a document that speaks for itself. Bombardier admits Mr. Bellemare sent a letter to MHI. Dkt.
 12 # 1-17. Bombardier denies it was sent instead of responding to Mr. Morimoto’s August 22, 2016
 13 letter. Paragraph 37 is also denied to the extent the allegations maintain that Bombardier made
 14 threats, acted out of fear, lacked evidence or explanation, or otherwise acted improperly.
 15 Bombardier denies any remaining allegations in this paragraph.

16 38. Bombardier’s threats to the MHI-Bombardier supply relationship—and its
 17 acknowledgment that potential competition from the MRJ animated those threats—did not
 18 emanate only from its President and CEO. On August 30, 2016, Bombardier’s Chief
 19 Procurement Officer, Nico Buchholz, issued similar threats to the President of MHI Canada
 20 Aerospace, Inc., Mike McCarthy. (Ex. D.) After noting that MHI was a “valued supplier of
 21 Bombardier,” Mr. Buchholz complained that MHI “has been recruiting several Bombardier
 22 employees to work on the MRJ program” and that this recruitment was “contrary to what we
 23 expect from a long term business partner such as MHI.” The letter made clear that Bombardier
 24 feared the competition posed by the MRJ, and that the competition was the primary basis for the
 25 company’s threats and demands. According to Mr. Buchholz, Mitsubishi’s hiring activity “raises
 26 serious concerns that valuable knowledge and know-how will be transferred to MHI and put to
 27 use to accelerate the development and entry of the MRJ aircraft which will compete with our

commercial aircraft programs.” Mr. Buchholz stated that Bombardier had “notified MHI’s head office of this issue and have asked that MHI refrain from hiring Bombardier employees. Unfortunately, our request seems to have been ignored. I’m asking your assistance in getting this issue permanently resolved: MHI, as a valued supplier to Bombardier, must stop recruiting Bombardier employees. I trust that you understand the seriousness of the situation and that I can count on your cooperation.”

Response to Paragraph 38: The allegations in Paragraph 38 contain characterizations of a document that speaks for itself. Bombardier admits Mr. Buchholz sent an email to Mr. McCarthy, but denies that it was a threat animated by potential competition from the MRJ or was otherwise improper. Bombardier denies any remaining allegations in this paragraph.

39. In early 2017, Bombardier again escalated its pressure and threats against Mitsubishi, this time through outside counsel. In a “Letter of Demand” dated February 17, 2017 and addressed to Mr. Morimoto of MITAC, Marianne Plamondon of the Norton Rose Fulbright law firm formally demanded that the solicitation of Bombardier employees cease. (Dkt. 1-18.) Ms. Plamondon asserted that “by targeting and soliciting key employees at Bombardier[,] Mitsubishi is (i) knowingly destabilising Bombardier’s aircraft activities which constitutes unfair competition and (ii) acquiring proprietary information belonging to Bombardier to accelerate the development and entry into service of the MRJ aircraft.” The letter identified 26 former Bombardier Product Development and Engineering employees who had allegedly been hired directly or indirectly by Mitsubishi since the summer of 2015, claiming that “Mitsubishi continues to target and solicit key employees who possess confidential information essential to the development of the MRJ program and to meeting certification requirements.” While acknowledging that the recruited employees in question possessed skills and abilities important to Mitsubishi’s effort to compete in the regional jet market, Ms. Plamondon attempted to portray that recruitment as an attack on Bombardier, asserting that Mitsubishi’s “solicitation of Bombardier’s employees [was] an attempt to destabilise and disrupt the internal affairs of a competitor, and obstruct their activities and aircraft development and launch,” claiming that this

1 “constitutes illegal and unfair competition towards Bombardier and engages Mitsubishi’s
2 liability and the liability of Bombardier’s former employees towards Bombardier.” Ms.
3 Plamondon explicitly acknowledged that the employees’ own “know-how” was valuable to
4 Mitsubishi, but nonetheless she appeared to believe that merely by hiring highly-skilled and
5 specialized engineers and test pilots from Bombardier, Mitsubishi was acquiring “trade secrets”
6 and “proprietary information” belonging to Bombardier. According to Ms. Plamondon:

7 The employees targeted by Mitsubishi are highly skilled and
8 specialized engineers and test pilots, many of whom held key
9 positions during their employment at Bombardier. More
10 importantly, the know-how and trade secrets acquired by these
11 employees can hardly be acquired outside the context of the
12 development of new aircraft programs. This information is both
13 rare and extremely valuable. We have every reason to believe these
employees are now assigned to the MRJ program, which raises
important questions regarding the disclosure of proprietary
information, especially in the wake of recent press highlighting
Mitsubishi’s difficulties and lack of expertise.

14 The letter warned Mitsubishi that unless it took “immediate corrective action,” Bombardier “will
15 have no other option than to take more formal legal action” against it. Bombardier demanded that
16 Mitsubishi “immediately cease any behavior which constitutes unfair competition”— behavior
17 that, although not explicitly defined, was evident from the remainder of the letter to mean the
18 hiring of Bombardier employees. Bombardier also demanded that Mitsubishi “[r]equire all
19 former employees of Bombardier to sign agreements undertaking not to solicit employees of
20 Bombardier” and to “[t]ake any and all necessary measures to ensure that the agreements are
21 respected by former employees of Bombardier and inform Bombardier of such measures.” The
22 letter concluded by demanding that Mitsubishi confirm in writing by February 28, 2017 that it
23 would accede to Bombardier’s no-poach agreement.

24 **Response to Paragraph 39:** The allegations in Paragraph 39 contain characterizations
25 of a document that speaks for itself. Bombardier admits that counsel for Bombardier sent a letter
26 to Mr. Morimoto of MITAC. Bombardier denies the allegations of Paragraph 39 relative to the
27

1 letter being a “threat” or being otherwise improper. Bombardier denies the remaining allegations
2 in this paragraph.

3 40. Bombardier’s over-the-top accusations about the “destabilization” of its business
4 through the loss of a few dozen employees were not only unsupported by any facts set forth in
5 Ms. Plamondon’s letter, they were also demonstrably false. Indeed, Ms. Plamondon made no
6 mention that Bombardier was laying off substantial numbers of its own employees at the same
7 time, including many of its most important employees in its aircraft business. For example, as
8 reported in news media:

9 In 2014, well before the first recruiting activity by AeroTEC, Bombardier
10 eliminated 2,900 positions worldwide.

11 In May 2015, Bombardier announced that it was cutting 1,750 jobs, including
12 1,000 positions at the company’s facility in Montreal and 480 at its facility
in Toronto. Positions eliminated in 2015 would eventually total 2,750.

13 In February 2016, Bombardier announced that it would cut 10 percent of its
14 workforce over two years.

15 In October 2016, Bombardier cut 7,500 positions worldwide, including 1,500
16 in Quebec. This itself constituted more than 10 percent of Bombardier’s
worldwide workforce.

17 In February 2017—the very month of Ms. Plamondon’s letter— Bombardier
18 announced that it would be eliminating another 7,000 positions
19 worldwide, including 2,800 in Canada (more than 10 percent of its
20 remaining Canadian workforce) and 220 in Wichita. Of these 7,000
positions, all but 150 would be in product development and engineering.

21 In light of these substantial and ongoing job cuts, it is implausible that MITAC’s recruitment and
22 hiring of 26 employees could “destabilize” Bombardier, particularly given Bombardier’s vast
23 size. According to Bombardier’s complaint in this litigation, Bombardier employs over 69,000
24 persons worldwide—even after the significant job cuts over the past several years—including
25 more than 29,000 persons who work in Bombardier’s Aerospace division.
26
27

1 **Response to Paragraph 40:** Bombardier admits that during the relevant time there was
 2 a reduction in its workforce but denies all remaining allegations in this paragraph.

3 41. MITAC refused to accede to Bombardier's anticompetitive demands. By letter
 4 dated March 9, 2017, MITAC's outside counsel, W. Jay DeVecchio of Morrison Foerster,
 5 rejected the accusations in Ms. Plamondon's letter and explained that MITAC would not enter an
 6 agreement with Bombardier in violation of the antitrust laws. (Ex. E.) As Mr. DeVecchio
 7 explained:

8 MITAC has not acted improperly in any way in connection with its
 9 hiring activities. MITAC has no legal or other obligation to
 10 Bombardier to refrain from exploring free-market hiring
 11 opportunities with potential employees. Furthermore, to engage in
 12 any such no-poaching agreement with Bombardier could create
 potential antitrust liability for both MITAC and Bombardier.
 MITAC accordingly strongly urges Bombardier to cease its
 repeated attempts to induce MITAC into such an agreement.

13 To be clear, MITAC's only intent in its hiring activities is to meet
 14 its human resources needs. MITAC does not have any intent to
 15 destabilize Bombardier's aircraft activities, to acquire
 Bombardier's proprietary information, or otherwise to harm
 Bombardier in any way.

16 Mr. DeVecchio continued, emphasizing the lack of factual support for Bombardier's assertions:

17 Bombardier unjustifiably accuses MITAC of soliciting key
 18 employees at Bombardier to "knowingly destabili[ze]
 19 Bombardier's aircraft activities" and "acquir[e] proprietary
 20 information belonging to Bombardier." Bombardier ascribes these
 21 motives to MITAC without providing any support, pointing only to
 22 the fact that MITAC, at times, has hired employees who previously
 23 worked for Bombardier. However, the fact that some of MITAC's
 24 employees have previously worked for Bombardier is hardly
 25 surprising, as both companies rely on a relatively limited pool of
 26 highly-skilled and specialized engineers to support their product
 27 lines. Bombardier also speculates that MITAC held a job fair in
 Montreal for the sole purpose of soliciting Bombardier employees,
 despite Montreal's being one of the top five largest hubs for
 aerospace jobs in North America. MITAC estimates that three-
 fourths of the nearly 150 attendees were not employed by
 Bombardier. We also note that MITAC held job fairs in various
 other North American cities for the same recruiting reasons as
 mentioned above.

1 In any event, MITAC is free to explore hiring possibilities with
2 whomever it pleases, regardless of any past or present employment
3 by Bombardier, absent a Bombardier employee's raising an
4 express, written employment agreement restriction by Bombardier
5 against future employment by MITAC. We are unaware of any
6 such enforceable "noncompete" agreements, and you have
7 conspicuously failed to mention any.

8 Mr. DeVecchio then responded to Bombardier's speculative allegations that the hiring of
9 Bombardier employees was part of a plot to improperly acquire Bombardier's trade secrets and
10 proprietary information:

11 Bombardier expresses its concern that former Bombardier
12 employees might disclose Bombardier's proprietary information or
13 trade secrets, although Bombardier does not identify a single
14 instance where such information was divulged or used, nor indeed
15 does Bombardier identify with any specificity any trade secrets the
16 former employees might usurp. Lacking these facts, Bombardier
17 attempts to support its speculation by referring to a MITAC press
18 release and two news articles that indicate MITAC currently is
19 working to meet certification requirements for its MRJ aircraft.
20 Certification requirements, however, are published in regulations
21 and publicly available. Therefore, this assertion rests on two
22 equally implausible premises: First, that only Bombardier
23 engineers have the know-how and information necessary to meet
24 these governmental and industry-wide certification standards; and
25 second that knowledge of these certification standards is a trade
26 secret of Bombardier. Neither of these premises is accurate.

27 Without any allegation, much less fact, that particular and
specifically-identified Bombardier trade secrets exist that are being
or are threatened to be disclosed, Bombardier is left only with the
implication that employees are not allowed to carry general know-
how with them in their new employment endeavors. This is
contrary to common sense and experience, and certainly is not the
law.

After observing that Bombardier had failed to respond to MITAC's requests to specifically
identify former employees improperly disclosing Bombardier's trade secrets or breaching

1 confidential or nondisclosure agreements, Mr. DeVecchio explained the procedures that MITAC
2 employs to prevent such disclosures:

3 New employees are instructed not to bring any proprietary
4 information or materials from their former employers, and they are
5 further instructed not to use, release, or disclose any such
6 information in the course of their employment at MITAC. These
7 requirements also are embedded in MITAC's Code of Ethics.
8 Indeed, many if not all of Bombardier's former employees were
specifically admonished not to bring over, disclose, or otherwise
misappropriate Bombardier trade secrets or confidential
information.

9 Finally, Mr. DeVecchio noted the lack of a legal basis for Bombardier's demands and further
10 explained that the agreement Bombardier was seeking from MITAC likely was illegal:

11 MITAC has no legal obligation to cease soliciting or hiring
12 Bombardier's employees. Yet, as your letter notes, Bombardier
13 repeatedly has attempted to induce MITAC to agree not to solicit
14 or not to hire Bombardier's employees. In doing so, Bombardier
15 has not identified any lawful basis for restricting competition
16 between Bombardier and MITAC in hiring employees.
17 Conversely, the U.S. Department of Justice and Federal Trade
18 Commission recently issued formal guidance instructing that such
19 agreements may be unlawful. This guidance instructs businesses
20 that "[a]n individual is likely breaking the antitrust law if he or she
21 ... agrees with individual(s) at another company to refuse to solicit
22 or hire that other company's employees (so-called "no poaching"
23 agreements)." *See*
24 <https://www.justice.gov/atr/file/903511/download> at 3, 6. This is
25 not a hypothetical concern. The Justice Department has brought
26 several actions, including two cases in which at least one company
27 "agreed to limit its hiring of employees who currently work at a
competitor." *Id.* at 4 (note that both cases involved the hiring of
"highly skilled and specialized engineers"). The agency further
warns that it "will criminally investigate allegations that employers
have agreed among themselves ... not to solicit or hire each others'
employees," and that naked "no-poaching" agreements could
expose the companies involved to "substantial criminal and civil
liability." *Id.* at 4, 6.

Response to Paragraph 41: The allegations in Paragraph 41 contain characterizations of a document that speaks for itself. Bombardier admits receipt of the March 9, 2017 letter sent by MITAC's outside counsel, but denies that it had been, or was, attempting to enter into an agreement in violation of the antitrust laws. Bombardier further denies that it had unjustifiably accused MITAC of improper solicitation of key Bombardier employees, or otherwise engaged in improper conduct. Bombardier denies any remaining allegations in this paragraph.

42. By letter dated April 12, 2017, Ms. Plamondon responded to Mr. DeVecchio's letter, accusing Mr. DeVecchio of acting inappropriately and in bad faith by requesting factual support for Bombardier's assertion that MITAC's hiring practices were destabilizing Bombardier's business or were otherwise unlawful. (Ex. F.) Rather than provide any such evidence of "destabilization" of Bombardier, Ms. Plamondon suggested that because the employees in question were important to MITAC's certification efforts, the hiring of these individuals necessarily constituted "unfair competition." Tellingly, Ms. Plamondon again made no mention that Bombardier had been laying off its own employees or that its CSeries aircraft, the CS100 and CS300, had already been awarded certification. Misstating the law—and making clear that Bombardier's primary concern was not the "destabilization" of its business but rather competition from the MRJ—Ms. Plamondon wrote that "We reiterate that the targeting by MITAC of Bombardier's employees for a project which is in direct competition with Bombardier's activities is clearly unfair competition under Quebec law" and falsely accused MITAC of engaging in the "unlawful misappropriation of Bombardier's competitive advantage." Ms. Plamondon did not dispute that the no-poaching agreement demanded by Bombardier would violate the U.S. antitrust laws. Instead, she stated Bombardier's view that the Sherman Act is "not directly applicable in Canada" and claimed that the demanded agreement was not a per se violation of Canada's Competition Act. The letter concluded by reiterating Bombardier's threat that "any further solicitation of Bombardier's employees by MITAC at this stage with the aim of further destabilising Bombardier's activities will be firmly contested."

Response to Paragraph 42: The allegations in Paragraph 42 contain characterizations of a document that speaks for itself. Bombardier admits Ms. Plamondon responded to Mr. DeVecchio's letter on April 12, 2017 and that Exhibit F of Defendant's Counterclaim is a copy of that letter. Bombardier: (1) denies that the letter accuses Mr. DeVecchio of "acting inappropriately and in bad faith by requesting factual support for Bombardier's assertion that MITAC's hiring practices were destabilizing;" (2) denies that the letter misstates the law of Quebec, (3) denies that the letter "falsely accused MITAC of engaging in the 'unlawful misappropriation of Bombardier's competitive advantage,'" and (4) denies that Bombardier otherwise acted improperly. Bombardier denies any remaining allegations in this paragraph.

43. Mr. DeVecchio responded on behalf of MITAC on May 1, 2017, writing to Ms. Plamondon: "We have received your response of April 12, 2017, and disagree with and reject every assertion you have made about MITAC's actions and motivations. Although we are always available for constructive discussions, MITAC has done nothing wrong, and we consider this matter to be closed." (Ex. G.)

Response to Paragraph 43: The allegations in Paragraph 43 contain characterizations of a document that speaks for itself. Bombardier admits receipt of a letter from Mr. DeVecchio and admits that Paragraph 43 accurately recites language from that letter. Bombardier disagrees with the conclusions of the letter and denies the remainder of Paragraph 43.

44. Bombardier's attempts to prevent Mitsubishi and AeroTEC from exercising their right to recruit and hire Bombardier employees were not limited to its baseless threats against the companies. Rather, in parallel with those threats, Bombardier sent dozens of threatening letters to former Bombardier employees and individuals considering employment opportunities in connection with the MRJ program. On March 2-3, 2017, Bombardier, through its outside counsel at Norton Rose Fulbright, sent a "letter of demand" to no fewer than 37 former Bombardier employees. (*See, e.g.*, Ex. H.) Similar letters were sent to no fewer than four other former Bombardier employees on April 13, 2017. (*See, e.g.*, Ex. I.) The letters contended that the former employees were in possession of undefined "confidential information" that the individuals were

1 purportedly “obligated contractually and legally to protect.” Noting that “MITAC carries on
 2 activities that compete directly with the activities of Bombardier,” the letters stated that the
 3 former employees were obligated, among other things, “not to solicit, directly or indirectly, our
 4 client’s employees in order to induce them to leave.” The letters concluded by stating that
 5 “Should you fail to comply fully with all of your contractual and legal obligations, our client has
 6 instructed us to institute against you, without further notice or delay, any and all legal
 7 proceedings as are appropriate and necessary, including injunction proceedings . . . DO
 8 GOVERN YOURSELF ACCORDINGLY.”

9 **Response to Paragraph 44:** The allegations in Paragraph 44 contain characterizations
 10 of documents that speak for themselves. Bombardier admits Exhibits H and I are copies of letters
 11 sent by its outside counsel to former employees, but denies that the referenced exhibits evidence
 12 the number of employees to whom letters were sent. Bombardier specifically denies it made, or
 13 was making “baseless threats against the companies,” and further specifically denies the
 14 referenced exhibits (or any other letters to former Bombardier employees and individuals
 15 considering employment opportunities in connection with the MRJ program) constituted
 16 “threats,” an improper “letter of demand,” or were otherwise improper. Bombardier denies the
 17 remaining allegations in this paragraph to the extent they suggest or imply that Bombardier was
 18 not acting within the purview of the law of competition. To the extent there are any further
 19 allegations in this paragraph, they are denied.

20 45. Bombardier also issued ultimatums to its own employees that led those employees
 21 to delay the start of their employment on the MRJ project. For example, on February 17, 2017,
 22 Andrius Knystautas, then a Principal Engineering Specialist and Section Chief of Flight
 23 Simulation at Bombardier, announced to Bombardier that he was resigning effective March 2,
 24 2017. On March 2, 2017—Mr. Knystautas’ planned last day of employment—Bombardier
 25 (through its outside counsel at Norton Rose Fulbright) demanded that Mr. Knystautas continue
 26 working at Bombardier for an additional ten weeks. (Ex. J.) Mr. Knystautas responded by stating
 27 his disagreement with Bombardier’s demand but offering to extend his end date so as to provide

1 a six-week notice period which, on account of overtime worked, would make his last day of
 2 work at Bombardier March 24, 2017. (Ex. K; Ex L.) In response, Bombardier refused to shorten
 3 the notice period it had demanded. (Ex. M.) Ultimately, Mr. Knystautas agreed to continue
 4 working at Bombardier until April 7, 2017, weeks after Mr. Knystautas' original scheduled start
 5 date with MITAC. (Ex. N.) Similarly, on August 1, 2017, Bombardier demanded that Jeff
 6 Kirdeikis, then a Principal Engineering Specialist, provide eight weeks' advance notice of his
 7 departure, and in doing so extend his announced end date at Bombardier and scheduled start date
 8 at MITAC. Ultimately, Mr. Kirdeikis agreed to extend his end date until late August, delaying
 9 his anticipated start date at MITAC.

10 **Response to Paragraph 45:** The allegations in Paragraph 45 contain characterizations
 11 of documents that speak for themselves. Bombardier admits Paragraph 45 only to the extent the
 12 referenced exhibits are communications between Bombardier management and employees who
 13 were leaving Bombardier to work on the "MRJ project." Bombardier specifically denies that the
 14 communications were "ultimatums" (or ultimatum "examples") that exceed Bombardier's
 15 management rights or improperly impinge on the rights of its employees, and denies any
 16 remaining allegations in Paragraph 45.

17 46. On information and belief, Bombardier has taken additional actions designed to
 18 limit the mobility of its employees, including by notifying employees that if they accept work on
 19 the MRJ project, they will be blacklisted from any future work at Bombardier.

20 **Response to Paragraph 46:** Bombardier denies the allegations in Paragraph 46.

21 47. As part of its predatory scheme to impede competition from the MRJ, Bombardier
 22 filed its complaint in this action on October 19, 2018, alleging claims of trade secret
 23 misappropriation against MITAC, MITAC America, AeroTEC, and former Bombardier
 24 employees Laurus Basson, Marc-Antoine Delarche, Cindy Dorneval, Michel Korwin-
 25 Szymanowski, and Keith Ayre; tortious interference with contractual relationship and/or
 26 business expectancy against MITAC, MITAC America, AeroTEC, and Mr. Korwin-
 27 Szymanowski; and breach of contract against Mr. Basson, Mr. Delarche, and Mrs. Dorneval.

Bombardier also named as defendants 88 “John and/or Jane Does,” identified only as former Bombardier employees now employed by MITAC, MITAC America, or AeroTEC or otherwise “working actively on the Mitsubishi Regional Jet project.” (*See* Dkt. 1.) In its prayer for relief, Bombardier seeks, among other things, “a preliminary and permanent injunction prohibiting MITAC, MITAC America, AeroTEC, and all those employed by, or acting in concert with, any of them from continuing to recruit personnel from Bombardier for the improper purpose of obtaining Bombardier confidential, proprietary, and/or trade secret information[.]” (*Id.* at 90).

Response to Paragraph 47: The allegations in Paragraph 47 contain characterizations of a document that speaks for itself. Bombardier admits it filed the complaint in this action on October 19, 2018, but denies that act was part of an alleged-but non-existent-“predatory scheme to impede competition from the MRJ.” Bombardier denies the remaining allegations in Paragraph 47 to the extent they suggest or imply the filing of the complaint was an improper act or seeks improper relief.

48. Also on October 19, 2018, Bombardier filed a motion for preliminary injunction against MITAC America, AeroTEC, Mr. Basson, Mr. Delarche, and Ms. Dorneval. (Dkt. 4.) Despite cloaking them in the language of trade secrets and propriety information, Bombardier’s motion and proposed order reveal that Bombardier’s primary objective in this litigation is to prevent and impede competition in the regional jet market. For example, in identifying the “irreparable harm” that it will incur if a preliminary injunction is not granted, Bombardier states that “unless the Defendants are enjoined, Bombardier’s misappropriated trade secret information stands to serve as the very foundation for a revival of the Japanese aircraft manufacturing industry as a whole.” (*Id.* at 20.) It adds that absent an injunction, Bombardier will “be forced to compete with literally a new nation of competing aircraft manufacturers that would otherwise not exist for at least several years to come.” (*Id.* at 21.)

Response to Paragraph 48: The allegations in Paragraph 48 contain characterizations of a document that speaks for itself. Bombardier admits it filed a motion for preliminary injunction on October 19, 2018. Bombardier denies any remaining allegations in Paragraph 48.

49. Since filing its complaint and preliminary injunction motion, Bombardier has confirmed that its objective in this litigation is to delay the certification of the MRJ. In a brief submitted to the Court on December 7, 2018, Bombardier contended that any delay in the schedule for its motion for a preliminary injunction could render its request for equitable relief “moot” given MITAC’s “public statements that it expects to obtain regulatory certification for its commercial aircraft ‘in mid-2019.’” (Dkt. 47 at 5; *see also id.* at 9 (“This may prove too late, as MITAC Japan expects certification of its aircraft by mid-2019.”).)

Response to Paragraph 49: The allegations in Paragraph 49 contain characterizations of a document that speaks for itself. To the extent an answer is required, Bombardier admits it submitted a brief to the Court on December 7, 2018, but denies that the brief “confirmed” any improper “objective in this litigation [] to delay the certification of the MRJ.” Bombardier’s brief was filed as part of its efforts to obtain relief it believes it is entitled to receive.

50. Like its pre-litigation demands, Bombardier’s statements in this litigation confirm that its primary objective here is to impede and delay entry of a nascent competitor in the regional jet market. The form of relief requested by Bombardier’s complaint and preliminary injunction evidence that Bombardier’s primary motivation is not to protect any valid intellectual property rights, but rather to accomplish the illicit goal of its anticompetitive scheme. Moreover, despite knowing about the hiring activities in support of the MRJ program at issue in its complaint since at least 2015 and knowing (or having reason to know) about the circumstances of the individual defendants’ departures for years, Bombardier waited until late 2018 to file this lawsuit. On information and belief, Bombardier delayed filing suit until the MRJ was close to entering the market and increasingly competing with the CRJ for sales so as to maximize the damage to Mitsubishi’s reputation and undermine sales of the MRJ.

Response to Paragraph 50: Bombardier admits filing this suit in 2018, but denies all other allegations of Paragraph 50.

1 **C. Bombardier’s Pretextual and Meritless Excuses for its Efforts to Impede**
 2 **Competition**

3 51. Bombardier’s supposed justifications for demanding the cessation of hiring
 4 related to the MRJ project have shifted through the years, but the primary motivation for its
 5 actions, as established by its own statements, has remained the same: to impede or delay the
 6 formidable competition on the merits posed by the MRJ’s entry into the regional jet market.

7 **Response to Paragraph 51:** Bombardier denies the allegations in Paragraph 51.

8 52. As detailed above, Bombardier’s initial threats against AeroTEC lacked factual
 9 and legal merit. Among other things, Bombardier did not have a basis to enforce its Code of
 10 Ethics and Business Conduct against departed employees in the way it contended, including
 11 against Mr. Korwin-Szymanowski, nor did it have a basis for its claims that AeroTEC could face
 12 “substantial liability” as a result of its lawful hiring efforts. Moreover, the form of “relief” sought
 13 by Bombardier—that AeroTEC enter an unenforceable, anticompetitive no-poach agreement—
 14 demonstrates the bad faith nature of Bombardier’s demands.

15 **Response to Paragraph 52:** Bombardier denies the allegations in Paragraph 52.

16 53. Bombardier’s initial threats against Mitsubishi were similarly meritless. As
 17 explained, the June 3, 2016 demand to “cease[] immediately” the soliciting and hiring of
 18 Bombardier personnel provided no legal or factual basis beyond a vague and speculative
 19 reference to the possibility that some undefined “Bombardier proprietary methods and know-
 20 how” would “inevitably be transferred and used by AeroTEC or MHI.” The next letter, sent July
 21 14, 2016, falsely insinuated that MITAC’s planned job fair was illegal. The subsequent letters
 22 from Bombardier’s President and Chief Executive Officer to MHI’s Chairman of the Board
 23 levied similarly vague and unsupported claims that Mitsubishi’s hiring practices were unlawful,
 24 threatening that the MHI-Bombardier supply relationship would be jeopardized if the hiring
 25 activities continued.

26 **Response to Paragraph 53:** The allegations in Paragraph 53 contain characterizations
 27 of documents that speak for themselves. Bombardier denies the allegations in Paragraph 53 in

1 that they mischaracterize Bombardier as making threats, false insinuations, and levying vague
 2 and unsupported claims. *See* Bombardier's responses to Paragraphs 33 and 34 above.
 3 Bombardier denies the remaining allegations in this paragraph.

4 54. The demands issued to Mitsubishi by Bombardier's outside counsel likewise
 5 sought to coerce MITAC to enter an anticompetitive no-poach agreement through baseless
 6 allegations of illegal conduct by Mitsubishi. As explained, the February 17, 2017 letter claimed
 7 that by "targeting and soliciting key employees at Bombardier[,] Mitsubishi is (i) knowingly
 8 destabilising Bombardier's aircraft activities which constitutes unfair competition." But the letter
 9 was devoid of facts suggesting that Bombardier had been "destabilized" by the loss of the 26
 10 employees identified in the letter (or otherwise), let alone that Mitsubishi had any reason to know
 11 that its efforts to hire employees for the MRJ program had any such effect. In fact, Bombardier
 12 had engaged in several rounds of highly-publicized layoffs, including in its aviation business,
 13 and Bombardier had already completed certification activities for its CSeries aircraft. Tellingly,
 14 Bombardier's complaint in this litigation contains no allegations of "destabilization" or related
 15 harm purportedly resulting from the Defendants' hiring activities.

16 **Response to Paragraph 54:** The allegations in Paragraph 54 contain characterizations
 17 of a document that speaks for itself. Bombardier specifically denies the allegations in
 18 Paragraph 54 to the extent they characterize Bombardier as seeking "to coerce MITAC to enter
 19 an anticompetitive no-poach agreement through baseless allegations of illegal conduct by
 20 Mitsubishi" and sending any communication "devoid of facts." *See* Bombardier's response to
 21 Paragraph 39 above. Bombardier denies the remaining allegations in this paragraph.

22 55. The February 17, 2017 letter also claimed that Mitsubishi was "(ii) acquiring
 23 proprietary information belonging to Bombardier to accelerate the development and entry into
 24 service of the MRJ aircraft." But the letter identified no such "proprietary information belonging
 25 to Bombardier" or "trade secrets" that had been taken by any of the departed employees, let
 26 alone acquired by Mitsubishi. Instead, the letter left little doubt that it was the employees' own
 27 "know-how . . . acquired [in] the context of the development of new aircraft programs" that

1 Bombardier sought to prevent being used on the MRJ program. Bombardier had no legal basis to
2 stop its employees from taking that know-how to Mitsubishi. Nor did Bombardier have any legal
3 basis for its demands that MITAC enter a per se illegal no-poach agreement. Nevertheless, even
4 after MITAC's counsel pointed out the factual and legal infirmities in Bombardier's demands,
5 Bombardier reiterated its baseless claims in its counsel's April 12, 2017 letter.

6 **Response to Paragraph 55:** The allegations in Paragraph 55 contain characterizations
7 of documents that speak for themselves. Bombardier admits to sending letters on February 17,
8 2017, and April 12, 2017, but Bombardier specifically denies the allegations in Paragraph 55 in
9 that they mischaracterize Bombardier's communications as having "factual and legal infirmities"
10 and falsely portray Bombardier's counsel as reiterating "baseless claims." For additional bases
11 for denying the allegations of Paragraph 55, see Bombardier's response to Paragraph 39 above.
12 Bombardier denies any remaining allegations in Paragraph 55.

13 56. The form of "relief" requested by Bombardier further demonstrates the
14 anticompetitive nature its pre-litigations threats and demands. Each of Bombardier's demands to
15 Mitsubishi and AeroTEC sought the cessation of recruitment and hiring activities in support of
16 the MRJ project. Bombardier did not (and could not) contend that any specific trade secrets had
17 been misappropriated by Mitsubishi or AeroTEC for use in the MRJ program, nor did
18 Bombardier request that the companies refrain from or cease using any misappropriated trade
19 secrets. Rather, Bombardier improperly demanded that Mitsubishi and AeroTEC cease their
20 lawful hiring activities. Indeed, Bombardier demanded that AeroTEC cease the hiring of not only
21 Bombardier's current employees but also former employees who had already departed the
22 company.

23 **Response to Paragraph 56:** Bombardier specifically denies the allegations in Paragraph
24 56 in that they mischaracterize Bombardier's pre-litigation communication as "anticompetitive,"
25 "threatening," and "improper." Bombardier denies the remaining allegations in this paragraph.

26 57. Bombardier's counsel in the instant litigation has essentially confirmed that there
27 was no factual basis for Bombardier's initial threats and demands. In a January 11, 2018 email to

1 counsel for MITAC America and the AeroTEC defendants, Bombardier's counsel stated that
2 "[w]hile Bombardier certainly took issue with your clients' recruiting tactics those years ago,
3 litigation was not necessary until (1) Bombardier discovered actual evidence of trade secret
4 misappropriation . . ." Although MITAC America denies Bombardier's counsel's assertion
5 regarding trade secret misappropriation, counsel's statement amounts to an unqualified
6 admission that Bombardier did not have any evidence of misappropriation at the time
7 Bombardier demanded that Mitsubishi and AeroTEC enter illegal no-poach agreements to delay
8 or disrupt certification and sale of the MRJ.

9 **Response to Paragraph 57:** The allegations in Paragraph 57 contain characterizations
10 of a document that speaks for itself. To the extent a response is required, all allegations of
11 Paragraph 57 are denied.

12 58. Bombardier's threats towards its former and then-current employees also
13 represent an improper attempt to chill the free flow of skilled labor. As explained in MITAC
14 America's motion to dismiss (Dkt. 54, incorporated herein by reference), Bombardier had no
15 legal basis to contend that its Code of Ethics and Business Conduct imposed binding contractual
16 obligations on its former employees that prevented them from seeking or accepting new
17 employment, nor did Bombardier have a factual basis to insinuate that the dozens of recipients of
18 its letters had acted contrary to the Bombardier Code of Ethics and Business Conduct or any
19 provision of law. On information and belief, Bombardier's objective in issuing these demands
20 was to impede or delay the MRJ program.

21 **Response to Paragraph 58:** The allegations in Paragraph 58 contain characterizations
22 of a document that speaks for itself. To the extent a response is required, Bombardier denies the
23 allegations in Paragraph 58.

24 59. Bombardier's claims against MITAC and MITAC America in this litigation are
25 meritless. As detailed in MITAC America's motion to dismiss (incorporated herein by
26 reference), there is no factual or legal basis for the claims in Bombardier's complaint that
27 MITAC America misappropriated Bombardier's trade secrets, tortiously interfered with a valid

1 contractual relationship or business expectancy of Bombardier, or otherwise acted unlawfully by
2 recruiting, hiring, and continuing to employ former Bombardier employees. For similar reasons,
3 Bombardier's claims against MITAC lack merit.

4 **Response to Paragraph 59:** The allegations in Paragraph 59 contain characterizations
5 of a document that speaks for itself. To the extent a response is required, Bombardier denies the
6 allegations in Paragraph 59.

7 60. Neither MITAC nor MITAC America has acquired, possessed, used, disclosed, or
8 even had knowledge of the alleged trade secret information identified by Bombardier.
9 Bombardier's complaint asserts no factual allegations to the contrary.

10 **Response to Paragraph 60:** Bombardier denies the allegations in Paragraph 60.

11 61. MITAC and MITAC America take precautions to ensure that newly hired
12 employees do not transfer to MITAC and MITAC America, or use in their work for MITAC and
13 MITAC America, trade secrets or other confidential or proprietary information that they acquired
14 from former employers. New employees are instructed not to bring any proprietary information
15 or materials from their former employers, and they are further instructed not to use, release, or
16 disclose any such information during their employment at MITAC or MITAC America. These
17 requirements are embedded in MITAC's Code of Ethics. On information and belief, the same
18 precautions are taken with respect to persons hired by MITAC's partners, such as AeroTEC, who
19 perform work on projects for MITAC or MITAC America. Consistent with these policies, on
20 information and belief, many if not all of the former Bombardier employees hired by AeroTEC
21 were specifically admonished not to bring with them, disclose, or otherwise misappropriate
22 Bombardier trade secrets or confidential information.

23 **Response to Paragraph 61:** Bombardier lacks knowledge or information sufficient to
24 form a belief about the truth, if any, of the allegations in Paragraph 61, and therefore denies
25 them.

26 62. MITAC and MITAC America have not misappropriated the alleged trade secret
27 information identified by Bombardier, and Bombardier lacks any basis to allege otherwise.

1 Bombardier's complaint is devoid of factual allegations connecting MITAC or MITAC America
2 to any alleged misappropriation. Moreover, the alleged trade secrets identified by Bombardier
3 would have been of no use to the development, certification, and sale of the MRJ by MITAC and
4 MITAC America.

5 **Response to Paragraph 62:** Bombardier denies all allegations in Paragraph 62.

6 63. Even if Bombardier had a basis to allege that MITAC or MITAC America had
7 obtained Bombardier information, Bombardier's claims would lack merit insofar as the
8 documents and information that Bombardier contends constitutes legally-protectable trade
9 secrets are not legally-protectable trade secrets because, among other things, such information is
10 publicly available and/or was provided to Bombardier by government agencies.

11 **Response to Paragraph 63:** Bombardier denies the allegations in Paragraph 63.

12 64. On information and belief, Bombardier's claims against AeroTEC in this
13 litigation are meritless because, among other things, AeroTEC: has not acquired, possessed,
14 used, or disclosed the alleged trade secret information identified by Bombardier; has not
15 tortiously interfered with a valid contractual relationship or business expectancy of Bombardier;
16 and has not otherwise acted unlawfully by recruiting, hiring, and continuing to employ former
17 Bombardier employees.

18 **Response to Paragraph 64:** Bombardier denies the allegations in Paragraph 64.

19 65. On information and belief, Bombardier's claims against the individual defendants
20 in this litigation are meritless because, among other things, none of the individual defendants:
21 used any Bombardier trade secrets in performing work on the MRJ project; transferred any
22 documents containing Bombardier trade secrets to any AeroTEC, MITAC or MITAC America
23 computer; disclosed any Bombardier trade secrets to any persons employed by AeroTEC,
24 MITAC or MITAC America; or discussed any Bombardier trade secrets with other persons
25 employed by AeroTEC, MITAC or MITAC America.

26 **Response to Paragraph 65:** Bombardier denies the allegations in Paragraph 65.
27

66. On information and belief, none of the individual defendants who allegedly sent Bombardier documents to their personal email accounts did so for the purpose of misappropriating those documents or Bombardier's trade secrets or other proprietary information. Rather, each did so for the purpose of conducting work that they had been assigned to do for Bombardier or for other reasons unrelated to the individuals' subsequent work on the MRJ project. Moreover, it was a common practice for Bombardier employees to send Bombardier documents to their home email systems so that they could work on and complete work assignments at home.

Response to Paragraph 66: Bombardier specifically denies the allegations in Paragraph 66 to the extent they contend that individual defendants who sent Bombardier documents to their personal email accounts did "so for the purpose of conducting work that they had been assigned to do for Bombardier or for other reasons unrelated to the individuals' subsequent work on the MRJ." Bombardier denies the remaining allegations in this paragraph because it lacks knowledge or information sufficient to form a belief about the truth, if any, of the allegations.

67. On information and belief, none of the Bombardier documents that the individual defendants allegedly sent to their personal email accounts contained trade secret information that would have been of use in the development, manufacture, or certification of the MRJ because of, among other things, the significant differences between the MRJ and Bombardier's jet aircraft, including but not limited to different systems (e.g., different flap skew detection systems and different pitot-static systems) and different engines. Bombardier knew or should have known that the Bombardier documents that the individual defendants allegedly sent to their home email systems contained no trade secret information that would have been of use in the development, manufacture, or certification of the MRJ.

Response to Paragraph 67: Bombardier denies the allegations in Paragraph 67.

D. The Relevant Market and Bombardier's Market Power

68. The relevant market of commerce in which to analyze the effects of Bombardier's anticompetitive scheme is the market for single-aisle, turbofan-powered commercial aircraft with

1 seating capacity for 50 to 100 passengers and flight ranges up to approximately 2,500 nautical
2 miles (the “Regional Jet Market”).

3 **Response to Paragraph 68:** Paragraph 68 sets forth a legal conclusion requiring no
4 response. To the extent a response is required, Bombardier denies that Paragraph 68 contains a
5 proper definition of a “Regional Jet Market,” and it denies all remaining allegations contained in
6 Paragraph 68.

7 69. The Regional Jet Market is an accepted, defined market within the aerospace
8 industry. Commercial aircraft with capacity for over 100 passengers are classified within the
9 industry as “narrowbody” jets (such as the Boeing 737 and the Airbus 220) or even larger
10 “widebody” jets (such as the Boeing 747 and the Airbus 330). Bombardier’s own annual market
11 forecasts acknowledge that the jet industry is segmented between “regional aircraft” with
12 capacity for up to 100 seats and jets with greater seating capacity. Similarly, Bombardier’s
13 Commercial Aircraft President Fred Cromer has stated as recently as June 2018 that the market
14 for regional jets with a maximum capacity of 100 passengers is distinct from the market for
15 narrowbody jets with capacity for over 100 passengers, acknowledging that Bombardier’s
16 CSeries family of jets (small narrowbody jets with seating capacity of 108 passengers and above,
17 now known as the Airbus A220) do not compete within the market for regional jets.

18 **Response to Paragraph 69:** Bombardier denies that Paragraph 69 accurately defines the
19 “Regional Jet Market” and on that basis denies the remaining allegations.

20 70. Regional jets are not interchangeable with other commercial aircraft given their
21 differentiated passenger seating capacity, flight ranges, fuel efficiencies, operating costs, and
22 sales prices. Other commercial aircraft are not close enough substitutes to prevent Bombardier
23 and other regional jet suppliers from raising prices above competitive levels, degrading quality,
24 or reducing output for regional jets. Put simply, other commercial aircraft are not a material
25 competitive constraint on Bombardier regional jets.

26 **Response to Paragraph 70:** Bombardier denies the allegations of Paragraph 70.
27

71. Specifically, airlines and other aerospace customers do not consider larger narrowbody jets to be a reasonable substitute for regional jets, nor do they consider regional jets to be a reasonable substitute for narrowbody jets. Regional jets and narrowbody jets are differentiated by their passenger seating capacities, flight ranges, and costs, among other factors. For example, the shorter flight range of regional jets prevents regional jets from servicing many routes that can be served only by narrowbody jets, including routes between the East and West coasts of the United States. Moreover, government regulations, airport operating restrictions, and contractual arrangements, including clauses in airline pilot contracts limiting the size of aircraft that can be flown by certain pilots, serve to reduce the interchangeability of regional jets and narrowbody jets. Regional jets and narrowbody jets are also differentiated by their initial sales price and subsequent operating costs. Larger and heavier narrowbody jets typically cost more to operate, on a trip cost basis, than smaller regional jets, and these operating costs represent most of the lifetime cost of a plane. As a result, airlines and other aerospace customers are disinclined to purchase a jet with more seats or a longer flight range than needed for a specific route. Narrowbody jets are not a material competitive constraint on regional jets.

Response to Paragraph 71: Bombardier denies the allegations of Paragraph 71.

72. Airlines and other aerospace customers do not consider turboprop airplanes to be a reasonable substitute for regional jets, nor do they consider regional jets to be a reasonable substitute for turboprop airplanes. As compared to turboprop airplanes, regional jets are capable of longer flight ranges, are faster, are safer, and provide superior passenger comfort, including less noise and vibration. Regional jets and turboprop airplanes are also differentiated by their initial sales price and subsequent operating costs. As such, turboprop airplanes are not a material competitive constraint on regional jets.

Response to Paragraph 72: Bombardier denies the allegations of Paragraph 72.

73. For these reasons, the Regional Jet Market is a distinct product market. The relevant geographic market for regional jets is worldwide. Regional jets are manufactured by a small number of companies (predominantly Bombardier and Embraer) and are capable of being

1 sold by those companies on a worldwide basis. However, the United States is the largest and
2 most important market area for regional jet manufacturers, as discussed further below.

3 **Response to Paragraph 73:** Bombardier denies the allegations of Paragraph 73 in that
4 MITAC America's definition of "the Regional Jet Market" is a legal conclusion, not a statement
5 of fact. Bombardier lacks information sufficient to form a belief concerning any remaining
6 allegations of Paragraph 73 and on that basis denies them.

7 74. Bombardier has significant market power in the Regional Jet Market.
8 Bombardier's market power in the Regional Jet Market is directly evidenced by its ability to
9 exclude or delay the entry of competition in the Regional Jet Market. Bombardier's market
10 power is further demonstrated by its significant share of the Regional Jet Market, a market which
11 is highly concentrated with the vast majority of jets manufactured by Bombardier and Embraer
12 and is subject to substantial barriers to entry and other conditions that serve to protect
13 Bombardier's market power, including Bombardier's exclusionary conduct. On information and
14 belief, these conditions allow Bombardier to charge supracompetitive prices for regional jets.

15 **Response to Paragraph 74:** The allegations of Paragraph 74 contain legal conclusions
16 to which no response is required. To the extent a response is required, Bombardier denies all
17 allegations of Paragraph 74.

18 75. Since the launch of the original CRJ, Bombardier has held a significant share of
19 the Regional Jet Market. From at least 2010 to present, Bombardier's worldwide share of the
20 Regional Jet Market has consistently been over 40%, with Bombardier's CRJs comprising over
21 40% of in-service regional jets worldwide as of 2018. Bombardier's position has been even more
22 significant in the largest and most important market for regional jets, the United States. In the
23 U.S., where Bombardier's only other active competitor in recent years has been Embraer,
24 Bombardier's market share was 49% as of 2018.(footnote omitted)

25 **Response to Paragraph 75:** The allegations in Paragraph 75 contain legal conclusions
26 to which no response is necessary. To the extent a response is required, Bombardier denies the
27

1 remaining allegations in this paragraph, including the related footnote, which state opinion,
2 rather than fact.

3 76. Bombardier's public statements confirm that the company expects to increase its
4 share of the Regional Jet Market in the near term. In media briefings in June 2018, Bombardier's
5 Commercial Aircraft President Fred Cromer stated that Bombardier is actively seeking to
6 increase its share of the market through sales of its CRJ 900 and that the company anticipates
7 achieving a market share of over 50%. Mr. Cromer contended that the only competition for sale
8 of the CRJ 900 came from Embraer, apparently suggesting to the media and public that the MRJ
9 would not enter the market and compete with the CRJ 900. Indeed, Mr. Cromer stated that the
10 barriers to entry into the marketplace would effectively shield Bombardier from competition
11 from the MRJ. In response to a question about whether Bombardier viewed the MRJ as a
12 competitive threat in the regional jet market, Mr. Cromer stated that "[i]t's complicated to bring
13 new technology to the marketplace . . . not only in your home country, but then to establish the
14 footprint outside of your home country with authorities around the world, and we've been doing
15 that for years and years and years and we have relationships and we know how to do it, and we
16 know how difficult it is. So I think it is going to be challenging over time for other OEMs that
17 are starting that process to catch up with what other established OEMs have, and that allows us
18 to continue to make our own advancements and continue to be at the forefront of where those
19 opportunities are."

20 **Response to Paragraph 76:** The allegations in Paragraph 76 purport to characterize
21 certain of Bombardier's public statements without specific citation, but Bombardier denies that
22 the characterization is either definitive or accurate. Bombardier also specifically denies
23 statements MITAC America attributes to Mr. Cromer suggest or indicate anticompetitive activity
24 by Bombardier. Bombardier denies any remaining allegations in this paragraph.

25 77. Bombardier's power in the Regional Jet Market is augmented by substantial
26 barriers to entry, including the following:
27

Development costs. The cost of developing a new jet is significant and often exceeds initial estimates. For example, the cost of developing the MRJ was initially estimated to be \$1.9 billion but has increased to nearly \$5 billion. Similarly, although Bombardier initially estimated that development of its narrowbody CSeries jets would cost \$2.1 billion, the program ultimately cost \$5.4 billion.

Complexity of development and certification process. Development of a new regional jet is complex, and entry to the market requires that a new jet pass through a long, complex, and difficult certification process. In addition, unanticipated challenges and problems in the development and certification process are commonplace. Moreover, as explained above, the finite supply of skilled engineers capable of assisting in the development and certification of regional jets serves as an additional barrier to entry.

Manufacturing requirements and costs. The manufacturing of regional jets requires substantial and costly manufacturing capabilities and facilities, as well as significant reliance on subcontractors and complex supply chains. Many firms are incapable of making the substantial investment required to establish adequate manufacturing capabilities and facilities.

Customer trust. Establishing customer trust in the operability and reliability of a regional jet can present challenges, particularly for manufacturers that are seeking to enter the jet market. Establishing a reliable global customer support network also requires significant investment and presents operational challenges. This is particularly true given the substantial price and long-term commitment associated with the purchase of a regional jet.

Brand loyalty and switching costs. Customers with existing fleets comprised of a given manufacturer's jets may be more inclined to purchase additional jets from the same manufacturer rather than a different manufacturer (particularly a new entrant) given the costs associated with switching to a different manufacturer's jets. These switching costs include the time and expense of retraining personnel (pilots, crew, and maintenance workers); the costs associated with maintenance program changes, proving flights, establishing a new spare parts inventory, equipment tooling, and supply chain integration; and other overhead costs associated with adding a new aircraft type to air operator's certificates issued by national aviation authorities. Loyalty to a given manufacturer's jets and personal relationships between a manufacturer's and customer's personnel may also present barriers to entry to a new competitor.

Response to Paragraph 77: Bombardier admits that Paragraph 77 identifies considerations relevant to deciding whether to develop, manufacture, sell and service an airplane. Paragraph 77 is specifically denied to the extent it implies or suggests that the recited considerations are due to anticompetitive activity of Bombardier. Bombardier also denies that

1 MITAC America has properly defined the “Regional Jet Market.” Bombardier denies any other
2 allegations in Paragraph 77.

3 78. These barriers to entry and other technical, business, and political challenges to
4 penetrating the Regional Jet Market are so significant that government support is often necessary
5 to the successful entry of a new jet manufacturer.

6 **Response to Paragraph 78:** Bombardier is without sufficient knowledge to form a
7 belief about the truth, if any, of the allegations of this paragraph and therefore denies them.

8 79. Both the cyclical nature of demand for regional jets and the length of a regional
9 jet’s lifecycle can present additional barriers to entry. These interrelated factors also make certain
10 periods of time particularly important for manufacturers’ sales of regional jets. The average
11 lifespan of regional jets currently in service is approximately 18 years. As an in-service regional
12 jet nears the end of its life, the owner must choose whether to replace the jet or invest in
13 maintenance and related services to extend the life of the jet. In the United States (which is home
14 to over 57% of all regional jets in service worldwide), the average age of regional jets currently
15 in service is such that a large replacement wave is forecast to begin in 2022. The ability to make
16 sales in advance of the upcoming U.S. replacement wave will be critical to regional jet
17 manufacturers’ success, both in terms of earning revenue from initial sales and aftermarket
18 services during the life of the aircraft, and in creating a foundation for additional sales inside and
19 outside the U.S. The next several years are thus of vital importance to established regional jet
20 manufacturers and new entrants alike. As a result, even a small impairment to a regional jet
21 manufacturer’s ability to compete in the upcoming U.S. replacement cycle could have significant
22 ramifications for the manufacturer’s revenues and market share— and for the revenues and
23 market shares of the manufacturer’s competitors. Accordingly, if Bombardier successfully
24 prevents, delays, or undermines the MRJ’s availability to be sold during the upcoming U.S.
25 replacement cycle, it could be foreclosed from capturing any meaningful share of the U.S. and
26 global markets for many years to come, and could be foreclosed from entry entirely.

1 **Response to Paragraph 79:** Bombardier denies the allegations of Paragraph 79, to the
 2 extent they are opinion based in large part on speculation. Bombardier specifically denies acting,
 3 or having acted in an improper or illegal manner to prevent, delay, or undermine the MRJ's
 4 availability to be sold during what MITAC America considers to be an upcoming U.S.
 5 replacement cycle. Bombardier denies any remaining allegations in this paragraph because it
 6 lacks knowledge or information sufficient to form a belief about the truth, if any, of the
 7 allegations.

8 80. The barriers to entry into the Regional Jet Market increase Bombardier's market
 9 power beyond the level suggested by the company's market share alone. This is particularly true
 10 with respect to customers whose fleets of regional jets are already comprised in whole or in part
 11 by Bombardier jets. Due to the aforementioned switching costs and brand loyalty in the current
 12 duopoly market, Bombardier has greater market power with respect to customers that already
 13 own or operate Bombardier jets. Entry of a new competitor could threaten Bombardier's market
 14 power with respect to these customers, particularly as they decide whether and when to replace
 15 aging CRJs already in their fleet.

16 **Response to Paragraph 80:** Bombardier denies the allegations of Paragraph 80, to the
 17 extent they are opinion based in large part on speculation. Bombardier specifically denies the
 18 allegations of Paragraph 80 to the extent they suggest improper or illegal activity by Bombardier.
 19 Bombardier denies any remaining allegations in this paragraph.

20 81. The nature of regional jets and their lifecycles also make the provision of
 21 aftermarket services an important source of revenue for regional jet manufacturers, including
 22 Bombardier. Over the life of an in-service regional jet, manufacturers typically earn substantial
 23 revenue from the sale of parts, maintenance, repair, and other services. The need for these
 24 services—and thus the revenue manufacturers derive from their provision—tends to increase as a
 25 jet ages. More expensive maintenance services, such as overhaul of jet engines, also tend to be
 26 required later in the life of a regional jet. As a result, as a jet ages, owners are often confronted
 27 with the choice of whether to extend the life of the jet through increasingly expensive

1 aftermarket maintenance and services or to instead replace the aging jet. A jet owner's decision
2 to forego the purchase of aftermarket services provided by the jet's manufacturer and instead to
3 purchase a new regional jet from a different manufacturer would thus have a significant impact
4 on both manufacturers' revenue streams.

5 **Response to Paragraph 81:** Bombardier denies the allegations of Paragraph 81, to the
6 extent they are opinion based in large part on speculation. Bombardier specifically denies the
7 allegations of Paragraph 81 to the extent they suggest improper or illegal activity by Bombardier.
8 Bombardier denies any remaining allegations in this paragraph.

9 82. As a result of these market dynamics, even a temporary delay or impairment of
10 the certification, development, or sale of the MRJ would have a significant impact not only on
11 the short- and long-term prospects for the MRJ, but also for Bombardier. Indeed, any such delay
12 or impairment would enable Bombardier to capture additional sales, including in the upcoming
13 replacement cycle in the U.S., and allow Bombardier to gain additional revenue from the sale of
14 aftermarket services as airlines elect to extend the lives of in-service Bombardier jets rather than
15 purchasing new MRJs.

16 **Response to Paragraph 82:** Bombardier denies the allegations of Paragraph 82, to the
17 extent they are opinion based in large part on speculation. Bombardier specifically denies the
18 allegations of Paragraph 82 to the extent they suggest improper or illegal activity by Bombardier.
19 Bombardier denies any remaining allegations in this paragraph.

20 **E. Anticompetitive Effect and Injury**

21 83. Bombardier's anticompetitive practices have excluded competition, reduced
22 choice, suppressed innovation, and increased barriers to entry in the Regional Jet Market. On
23 information and belief, Bombardier's conduct has also reduced output and increased prices for
24 regional jets. As a result, Bombardier's actions have harmed competition, regional jet purchasers,
25 engineers, and MITAC America.

26 **Response to Paragraph 83:** Bombardier denies the allegations in Paragraph 83.
27

1 84. Competition in the Regional Jet Market has been harmed. Bombardier has
2 delayed the entry of new competitors, reduced the movement of skilled aerospace engineers,
3 reduced choice, and suppressed innovation. By delaying the entry of new regional jets,
4 Bombardier has reduced choice and limited innovation in the Regional Jet Market. By blocking
5 and otherwise chilling the movement of skilled engineers within the market, Bombardier has
6 further diminished competitors' ability to compete and innovate in the market. And by unfairly
7 tarnishing the image of Mitsubishi and the MRJ in the eyes of customers, Bombardier has
8 suppressed competition in the Regional Jet Market. On information and belief, this has reduced
9 output and elevated prices of regional jets above what they would have been but for
10 Bombardier's conduct.

11 **Response to Paragraph 84:** Bombardier denies the allegations in Paragraph 84.

12 85. Purchasers of regional jets have also been harmed in that they have fewer and
13 less innovative options for regional jets. In addition, Bombardier can maintain higher prices than
14 would otherwise prevail in the face of new competition.

15 **Response to Paragraph 85:** Bombardier denies the allegations in Paragraph 85.

16 86. Individual engineers looking for employment related to commercial jets have also
17 been harmed. Individual engineers and competitors for their talent are harmed by Bombardier's
18 campaign to impede the movement of skilled engineers. The industry is highly concentrated and
19 news travels fast when any company or individual in the industry is sued. Bombardier's threats
20 and actual litigation against individual employees chills the marketplace for such talent, which
21 will endure for several years to come.

22 **Response to Paragraph 86:** Bombardier denies the allegations in Paragraph 86.

23 87. MITAC America has incurred antitrust injury from the violations of law alleged
24 and would not have incurred such injury in the absence of Bombardier's anticompetitive actions.
25 As the direct result of Bombardier's ongoing predatory campaign described above, MITAC
26 America has been undermined or delayed in its ability to recruit, hire, and retain engineers
27 critical to the development and certification of the MRJ, which has not only risked delaying the

1 MRJ's certification, but also impedes MITAC America's innovation and design efforts and
 2 raises MITAC America's costs and the barriers to enter the Regional Jet Market.

3 **Response to Paragraph 87:** Bombardier denies the allegations in Paragraph 87.

4 88. For example, as a result of Bombardier's anticompetitive conduct:

5 Recruitment and hiring efforts by MITAC America, MITAC, and AeroTEC in
 6 support of the MRJ program have been undermined.

7 AeroTEC was forced to decline to extend an offer of employment to one or more
 8 Bombardier employees that would have supported the MRJ program.

9 At least one prospective employee that MITAC America intended to hire
 10 withdrew his application for employment, citing the situation between
 Bombardier and Mitsubishi as the reason for doing so.

11 The start dates of at least two individuals employed in connection with the MRJ
 12 program were delayed.

13 On information and belief, other prospective employees declined to either seek or
 14 accept employment on the MRJ program, slowing the pace of hiring related to
 the MRJ program.

15 The ability of MITAC America, MITAC, and AeroTEC to hire and retain
 16 employees for the MRJ program, including but not limited to highly-skilled
 17 individuals currently or formerly employed by Bombardier, has been reduced,
 with significant near-term and long-lasting effects on the companies.

18 **Response to Paragraph 88:** Bombardier specifically denies that any of the examples set
 19 forth in Paragraph 88 constitute anticompetitive conduct. Bombardier further denies any
 20 remaining allegations in Paragraph 88 because it lacks knowledge or information sufficient to
 21 form a belief about the truth, if any, of the allegations.

22 89. MITAC America has also incurred antitrust injury in the form of harm to its
 23 reputation and goodwill caused by Bombardier's anticompetitive conduct, including its baseless
 24 claims that MITAC America has misappropriated Bombardier's trade secrets. On information
 25 and belief, the reputation and goodwill of MITAC America and MITAC among current and
 26 potential MRJ customers and suppliers has been diminished as a result of Bombardier's conduct,
 27

1 with long lasting detrimental effects. Similarly, Bombardier's insinuation that the MRJ program
2 is built on misappropriated trade secrets may create uncertainty among current and potential
3 MRJ customers and suppliers about whether MITAC America and MITAC can be trusted
4 business partners and whether the MRJ will be able to meet development and production
5 deadlines and enter the market notwithstanding the litigation. Both harm not only MITAC
6 America's reputation and goodwill, but also its sales.

7 **Response to Paragraph 89:** Bombardier denies the allegations in Paragraph 89.

8 90. Bombardier's relentless threats and demands that MITAC America, MITAC, and
9 AeroTEC enter into unlawful no-poach agreements have also forced the companies to divert
10 attention and resources that could have otherwise been committed to the MRJ program, including
11 through the retention of outside counsel and mounting legal fees and costs associated with
12 responding to Bombardier's baseless demands and legal actions.

13 **Response to Paragraph 90:** Bombardier denies that it undertook any action either prior
14 to, or during this litigation, that is baseless, anticompetitive, improper, or illegal. Bombardier
15 denies any remaining allegations in this paragraph because it lacks knowledge or information
16 sufficient to form a belief about the truth, if any, of the allegations.

17 91. The effects of Bombardier's predatory scheme harm competition, regional jet
18 purchasers, aerospace engineers, and MITAC America. These harms are the types that antitrust
19 laws were designed to prevent and those harms flow directly from that which makes
20 Bombardier's conduct unlawful. Bombardier's practices are not reasonably necessary to
21 accomplish any significant procompetitive benefit.

22 **Response to Paragraph 91:** Bombardier denies that is has engaged in a "predatory
23 scheme" or harmful and unlawful conduct of the kind envisioned by antitrust laws. Bombardier
24 denies the remaining allegations in this paragraph because it lacks knowledge or information
25 sufficient to form a belief about the truth, if any, of the allegations.

**COUNTERCLAIM I: ATTEMPTED MONOPOLIZATION IN VIOLATION OF THE
SHERMAN ACT, 15 U.S.C. § 2 92.**

92. MITAC America realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

Response to Paragraph 92: Bombardier fully restates and incorporates by reference its responses to Paragraphs 1 through 91 above.

93. Bombardier has market power in the Regional Jet Market and has a dangerous probability of obtaining monopoly power.

Response to Paragraph 93: Bombardier denies the allegations in Paragraph 93.

94. Bombardier has engaged in a scheme to expand its market power in the Regional Jet Market, to the detriment of competition, purchasers of regional jets, aerospace engineers, and MITAC America.

Response to Paragraph 94: Bombardier denies the allegations in Paragraph 94.

95. Bombardier's anticompetitive and exclusionary conduct includes its ongoing actions to impede or delay the development, certification, and sale of the MRJ by (1) levying baseless threats at MITAC America, MITAC, MHI, AeroTEC, and those companies' current and prospective employees in order to restrict the free flow of skilled labor necessary to the development and certification of the MRJ; (2) making threats against its own employees to deter them from accepting employment on the MRJ program; (3) attempting to coerce MITAC America, MITAC, MHI, and AeroTEC to enter per se unlawful no-poaching agreements in order to restrict recruitment and hiring activities in support of the MRJ program; (4) threatening the long-standing supply relationship between MHI and Bombardier in an attempt to achieve its illicit ends; and (5) initiating this litigation in an effort to delay the MRJ program and undermine sales of the MRJ. In furtherance of this scheme, Bombardier has engaged in a pattern of threats of litigation without regards to the merits and for the purpose of injuring MITAC, MITAC America, AeroTEC, and competition in the Regional Jet Market. Bombardier has also threatened and filed litigation against MITAC, MITAC America, AeroTEC, and former Bombardier

1 employees that is objectively baseless and subjectively intended to interfere with MITAC,
2 MITAC America, and AeroTEC's ability to compete.

3 **Response to Paragraph 95:** Bombardier admits that it has filed litigation against
4 MITAC, MITAC America, AeroTEC, and former Bombardier employees, but Bombardier
5 denies it has undertaken any anticompetitive or exclusionary conduct, including but not limited
6 to any of the acts enumerated in Paragraph 95. Bombardier denies the remaining allegations in
7 Paragraph 95.

8 96. Bombardier undertook the anticompetitive and exclusionary conduct alleged
9 herein with the specific intent to acquire monopoly power in the Regional Jet Market.

10 **Response to Paragraph 96:** Bombardier denies the allegations in Paragraph 96.

11 97. As evidenced by Bombardier's market share and the dynamics of the Regional Jet
12 Market, including the significant barriers to entry to the Regional Jet Market, there is a
13 dangerously high probability that Bombardier's scheme to impede competition from the MRJ
14 and monopolize the Regional Jet Market will succeed.

15 **Response to Paragraph 97:** Bombardier denies the allegations of Paragraph 97.

16 98. Bombardier's conduct has no efficiency or procompetitive benefit or justification,
17 the anticompetitive effects of its conduct outweigh any purported procompetitive justifications,
18 and Bombardier could reasonably achieve any purported procompetitive goals through less
19 restrictive alternatives.

20 **Response to Paragraph 98:** Bombardier denies the allegations of Paragraph 98.

21 99. Bombardier's conduct constitutes attempted monopolization in violation of
22 Section 2 of the Sherman Act, 15 U.S.C. § 2.

23 **Response to Paragraph 99:** Bombardier denies the allegations of Paragraph 99.

24 100. As a direct and proximate result of the unlawful conduct of Bombardier in
25 furtherance of the violations alleged, MITAC America has been injured in its business and
26 property in an amount to be proved at trial and to be automatically trebled, as provided by 15
27 U.S.C. § 15.

Response to Paragraph 100: Bombardier denies the allegations of Paragraph 100.

101. MITAC America is also entitled to recover from Bombardier the cost of suit, including a reasonable attorney's fee, as provided by 15 U.S.C. § 15.

Response to Paragraph 101: Bombardier denies the allegations of Paragraph 101.

COUNTERCLAIM II: ATTEMPTED MONOPOLIZATION IN VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86.040

102. MITAC America realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

Response to Paragraph 102: Bombardier fully restates and incorporates by reference its responses to Paragraphs 1 through 101.

103. Bombardier has market power in the Regional Jet Market and has a dangerous probability of obtaining monopoly power.

Response to Paragraph 103: Bombardier denies the allegations in Paragraph 103.

104. Bombardier has engaged in a scheme to expand its market power in the Regional Jet Market, to the detriment of competition, purchasers of regional jets, aerospace engineers, and MITAC America.

Response to Paragraph 104: Bombardier denies the allegations in Paragraph 104.

105. Bombardier's anticompetitive and exclusionary conduct includes its ongoing actions to impede or delay the development, certification, and sale of the MRJ by (1) levying baseless threats at MITAC America, MITAC, MHI, AeroTEC, and those companies' current and prospective employees in order to restrict the free flow of skilled labor necessary to the development and certification of the MRJ; (2) making threats against its own employees to deter them from accepting employment on the MRJ program; (3) attempting to coerce MITAC America, MITAC, MHI, and AeroTEC to enter per se unlawful no-poaching agreements in order to restrict recruitment and hiring activities in support of the MRJ program; (4) threatening the long-standing supply relationship between MHI and Bombardier in an attempt to achieve its illicit ends; and (5) initiating this litigation in an effort to delay the MRJ program and undermine

1 sales of the MRJ. In furtherance of this scheme, Bombardier has engaged in a pattern of threats
2 of litigation without regards to the merits and for the purpose of injuring MITAC, MITAC
3 America, AeroTEC, and competition in the Regional Jet Market. Bombardier has also threatened
4 and filed litigation against MITAC, MITAC America, AeroTEC, and former Bombardier
5 employees that is objectively baseless and subjectively intended to interfere with MITAC,
6 MITAC America, and AeroTEC's ability to compete.

7 **Response to Paragraph 105:** Bombardier admits that it has filed litigation against
8 MITAC, MITAC America, AeroTEC, and former Bombardier employees, but Bombardier
9 denies it has undertaken any anticompetitive and exclusionary conduct, including but not limited
10 to any of the acts enumerated in Paragraph 105. Bombardier denies the remaining allegations in
11 Paragraph 105.

12 106. Bombardier undertook the anticompetitive and exclusionary conduct alleged
13 herein with the specific intent to acquire monopoly power in the Regional Jet Market.

14 **Response to Paragraph 106:** Bombardier denies the allegations in Paragraph 106.

15 107. As evidenced by Bombardier's market share and the dynamics of the Regional Jet
16 Market, including the significant barriers to entry to the Regional Jet Market, there is a
17 dangerously high probability that Bombardier's scheme to impede competition from the MRJ
18 and monopolize the Regional Jet Market will succeed.

19 **Response to Paragraph 107:** Bombardier denies the allegations of Paragraph 107.

20 108. Bombardier's conduct has no efficiency or procompetitive benefit or justification,
21 the anticompetitive effects of its conduct outweigh any purported procompetitive justifications,
22 and Bombardier could reasonably achieve any purported procompetitive goals through less
23 restrictive alternatives.

24 **Response to Paragraph 108:** Bombardier denies the allegations of Paragraph 108.

25 109. Bombardier's conduct constitutes attempted monopolization in violation of RCW
26 19.86.040.

27 **Response to Paragraph 109:** Bombardier denies the allegations of Paragraph 109.

110. As a direct and proximate result of the unlawful conduct of Bombardier in furtherance of the violations alleged, MITAC America has been injured in its business and property in an amount to be proved at trial and, in the Court's discretion, to be increased up to an amount not to exceed three times the actual damages sustained, as provided by RCW 19.86.090.

Response to Paragraph 110: Bombardier denies the allegations of Paragraph 110.

111. MITAC America is also entitled to recover from Bombardier the cost of suit, including a reasonable attorney's fee, as provided by RCW 19.86.090.

Response to Paragraph 111: Bombardier denies the allegations of Paragraph 111.

COUNTERCLAIM III: PROPOSAL FOR AN ARRANGEMENT TO VIOLATE THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86.030

112. MITAC America realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

Response to Paragraph 112: Bombardier fully restates and incorporates by reference its responses to Paragraphs 1 through 111.

113. Bombardier proposed (and demanded) that MITAC America agree to cease all recruitment and hiring of Bombardier employees.

Response to Paragraph 113: Bombardier denies the allegations of Paragraph 113.

114. If consummated, Bombardier's proposed no-poaching agreement would have constituted a per se violation of RCW 19.86.030, which prohibits every contract, combination, or conspiracy in restraint of trade or commerce. In any event, the proposed agreement had no legitimate business justification, but instead was proposed and demanded by Bombardier in order to reduce competition in the Regional Jet Market by restricting hiring related to the MRJ. There is no efficiency-enhancing, procompetitive justification for the proposal. Any purported procompetitive justifications or effects are outweighed by the anticompetitive impact, and there are less restrictive alternatives available to achieve any purported procompetitive impact.

Response to Paragraph 114: Bombardier denies the allegations of Paragraph 114.

115. As a direct and proximate result of its refusal to accede to Bombardier's proposal, MITAC America has been injured in its business and property in an amount to be proved at trial and trebled pursuant to RCW 19.86.090. In particular, MITAC America has been forced to incur the burden and expense of responding to and defending against Bombardier's repeated threats and demands, including the attorneys' fees and costs incurred in relation to the instant litigation, and to otherwise divert away attention and resources that could have otherwise been committed to the MRJ program.

Response to Paragraph 115: Bombardier denies the allegations of Paragraph 115.

116. MITAC America is also entitled to recover from Bombardier the cost of suit, including a reasonable attorney's fee, as provided by RCW 19.86.090.

Response to Paragraph 116: Bombardier denies the allegations of Paragraph 116.

**COUNTERCLAIM IV: UNFAIR COMPETITION IN VIOLATION OF THE
WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86.020 117**

117. MITAC America realleges and incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

Response to Paragraph 117: Bombardier fully restates and incorporates by reference its responses to Paragraphs 1 through 116.

118. Bombardier's conduct constitutes unfair methods of competition and unfair acts or practices within the meaning of RCW 19.86.020 because the conduct: (1) offends public policy as it has been established by statutes, the common law, or otherwise, including state and federal laws that prohibit anticompetitive conduct; (2) is oppressive in that it seeks to prevent or limit lawful competition; and/or (3) causes substantial injury to competitors (e.g. MITAC America, MITAC, and AeroTEC), other businesspersons (e.g., airlines and other purchasers of regional jets who may pay more for regional jets due to the reduction in competition in the market for regional jets), and/or consumers (e.g., individuals who may pay more for airplane tickets if airplane manufacturers can charge airlines more for jets due to the reduction of competition in the market for regional jets).

1 **Response to Paragraph 118:** Bombardier denies the allegations of Paragraph 118.

2 119. Bombardier's conduct took place in the course of trade or commerce because
3 Bombardier's threats and demands were issued by Bombardier in the course of its business
4 operations, were directed towards other companies and individuals involved in the manufacture
5 of regional jets, and were related to efforts to compete with Bombardier in the market for
6 regional jets.

7 **Response to Paragraph 119:** Bombardier denies the allegations of Paragraph 119.

8 120. Bombardier's conduct is injurious to the public interest, within the meaning of
9 RCW 19.86.093(1), because it violates statutes that incorporate the Consumer Protection Act,
10 including but not limited to RCW 19.86.020, 19.86.030, and 19.86.040.

11 **Response to Paragraph 120:** Bombardier denies the allegations of Paragraph 120.

12 121. Bombardier's conduct is injurious to the public interest within the meaning of
13 RCW 19.86.093(3)(a) because it has injured persons other than MITAC America, including
14 MITAC, MHI, AeroTEC, the current and former Bombardier employees who were the recipients
15 of Bombardier's threats and allegations, and other individuals, including but not limited to
16 current and former Bombardier employees, among others, who were deterred or dissuaded from
17 seeking employment related to the MRJ.

18 **Response to Paragraph 121:** Bombardier denies the allegations of Paragraph 121.

19 122. Bombardier's conduct is injurious to the public interest within the meaning of
20 RCW 19.86.093(3)(b) and RCW 19.86.093(3)(c) because it had the capacity, and still has the
21 capacity, to injure other persons, including current and former Bombardier employees who were
22 deterred or dissuaded from seeking employment related to the MRJ, as well as other companies
23 or individuals who may be the recipients of similarly improper threats, accusations, and
24 invitations to collude in the future.

25 **Response to Paragraph 122:** Bombardier denies the allegations of Paragraph 122.

26 123. As a direct and proximate result of Bombardier's conduct, MITAC America has
27 been injured in its business and property in an amount to be proved at trial and, in the Court's

discretion, to be increased up to an amount not to exceed the greater of three times the actual damages sustained or \$25,000, as provided by RCW 19.86.090.

Response to Paragraph 123: Bombardier denies the allegations of Paragraph 123.

124. MITAC America is also entitled to recover from Bombardier the cost of suit, including a reasonable attorney's fee, as provided by RCW 19.86.090.

Response to Paragraph 124: Bombardier denies the allegations of Paragraph 124.

BOMBARDIER'S AFFIRMATIVE DEFENSES

Without prejudice to the denials set forth in its Answer, without admitting any averments of the Counterclaims not otherwise admitted, and without undertaking any of the burdens imposed by law on MITAC America, Bombardier asserts the following separate defenses to the Counterclaims:

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim upon Which Relief Can Be Granted)

The Counterclaims fail to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

SECOND AFFIRMATIVE DEFENSE (Equitable Defenses)

The Counterclaims are barred by the doctrines of acquiescence, estoppel, laches, waiver, unclean hands, unjust enrichment, and/or other equitable defenses that will find support in evidence uncovered during discovery in this action.

THIRD AFFIRMATIVE DEFENSE (Adequacy of Remedy at Law)

MITAC America is not entitled to any injunctive relief sought, either preliminarily or permanently, because any injury to MITAC America is neither immediate nor irreparable, MITAC America has an adequate remedy at law, the balance of hardships favors no injunctive relief, and the public interest favors no injunctive relief.

FOURTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

The Counterclaims are barred, in whole or in part, by the applicable statute(s) of limitations.

FIFTH AFFIRMATIVE DEFENSE
(Independent Duty/Economic Loss)

The Counterclaims are barred by the doctrines of Independent Duty and/or Economic Loss.

SIXTH AFFIRMATIVE DEFENSE
(Lack of standing)

The Counterclaims are barred because MITAC America lacks standing to assert injury based on Bombardier's alleged anticompetitive conduct.

SEVENTH AFFIRMATIVE DEFENSE
(Lawful Competition)

The Counterclaims are barred by the doctrine of lawful competition.

EIGHTH AFFIRMATIVE DEFENSE
(Unreasonable Restraint Of Trade)

The Counterclaims are barred, in whole or in part, because the relief sought by MITAC America would constitute an unreasonable restraint of trade.

NINTH AFFIRMATIVE DEFENSE
(No Damages)

MITAC America is entitled to no relief because MITAC America has sustained no damage as a result of Bombardier's activities.

TENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

MITAC America is entitled to no relief because MITAC America has failed to mitigate its damages allegedly resulting from Bombardier's purported misconduct.

ELEVENTH AFFIRMATIVE DEFENSE
(Contributory Negligence)

MITAC America is entitled to no relief because any damages allegedly sustained as a result of the conduct alleged are in fact proximately caused, in whole or in part, by MITAC America's own negligent conduct in attempting to develop and certify the MRJ.

ADDITIONAL AFFIRMATIVE DEFENSES

Bombardier reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure and any other defenses, at law or in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

Dated this 13th day of May, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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